

San Francisco Law Library

No. 33000

Presented by

EXTRACT FROM BY-LAWS.

Section 9. No book shall, at any time, be taken from the Library Room to any other place than to some court room of a Court of Record, State or Federal, in the City of San Francisco, or to the Chambers of a Judge of such Court of Record, and then only upon the accountable receipt of some person entitled to the use of the Library. Every such book so taken from the Library, shall be returned on the same day, and in default of such return the party taking the same shall be suspended from all use and privileges of the Library until the return of the book or full compensation is made therefor to the satisfaction of the Trustees.

Sec. 11. No books shall have the leaves folded down, or be marked, dog-eared, or otherwise soiled, defaced or injured. A party violating this provision, shall be liable to pay a sum not exceeding the value of the book, or to replace the volume by a new one, at the discretion of the Trustees or Executive Committee, and shall be liable to be suspended from all use of the Library till any order of the Trustees or Executive Committee in the premises shall be fully complied with to the satisfaction of such Trustees or Executive Committee.



627
No. 1883

UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE NINTH CIRCUIT.

TRANSCRIPT OF RECORD.

THE UNITED STATES OF AMERICA (Complainant),
Appellant,

vs.

THE BARBER LUMBER COMPANY (a Corporation),
(Defendant), Appellee.

VOLUME III.

(Pages 801 to 1200, Inclusive.)

Upon Appeal from the United States Circuit Court
for the District of Idaho, Central
Division.

FILED

SEP 19 1910



Records of H. V. Circuit
Court of Appeals

627

No. 1883

UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE NINTH CIRCUIT.

TRANSCRIPT OF RECORD.

THE UNITED STATES OF AMERICA (Complainant),
Appellant,

vs.

THE BARBER LUMBER COMPANY (a Corporation),
(Defendant), Appellee.

VOLUME III.

(Pages 801 to 1200, Inclusive.)

**Upon Appeal from the United States Circuit Court
for the District of Idaho, Central
Division.**

(Testimony of Edward H. Starn.)

Q. Do you remember any other bank that you had an account with? A. No.

Q. That is the only bank you had ever done business with here, so far as depositing your money there and drawing it?

A. No, I think I had deposited in other banks.

Q. Do you know what other banks you had deposited in?

A. No, I wouldn't be sure now.

Q. Now, let me get this, see if I understand you. The day that you and your wife proved up on this land, or purchased it from the Government in the land office, you paid somewhere upwards of eight hundred dollars or more. Is that right—four hundred and something a claim?

A. I expect it's right, yes.

Q. And you had gotten \$300 of that from Mr. Stahl? A. Yes, sir.

Q. And you drew a check for \$500 on some other bank, some bank. Is that right?

A. I don't remember whether I drew a check or not, but I got the money.

Q. From a bank?

A. From the Capital State Bank.

Q. Was it a note that you gave to that bank?

A. No.

Q. Did you give a check for the money you got at that bank?

A. I don't remember about that.

Q. Do you know who left the money at the bank for you?

(Testimony of Edward H. Starn.)

A. I think I left it there myself.

Q. Do you know when you left it there?

A. No. I think I always had money there more or less. I think the records of the bank will show that. If it doesn't, I think I have got a bank-book down home that I could show you.

The EXAMINER.—How long have you been in attendance here as a witness, Mr. Starn?

A. I was here Monday, the first day.

The EXAMINER.—Just this last Monday?

A. Yes, sir.

The EXAMINER.—Have you talked with anybody since you were here as to what your testimony should be in this case? A. I think not.

The EXAMINER.—With any of the witnesses or anybody else? A. I think not.

Mr. GORDON.—You say you think not. Do you mean that you haven't?

A. There has been some talk about it, but not about my testimony.

Q. With whom have you talked?

A. I couldn't say about that.

Q. Do you know?

A. Well, I might know and I might not.

Q. Tell us the best you know about it.

A. The best I know I guess is I don't know.

Q. Now, do you know anybody who has talked about the testimony to be given in this case by you or any other witness? A. No, sir.

Mr. KEIGWIN.—Q. But you know that there has been some talk?

(Testimony of Edward H. Starn.)

A. O, we talked a little over it, but I know what I know about it, and that's all there is to it.

Mr. GORDON.—Q. Who has talked with you?

A. I couldn't say that anyone has.

Mr. KEIGWIN.—Q. But there has been some talk?

A. O, a little talk, certainly.

Q. And you have participated in that talk?

A. O, more or less.

Q. Have you your bank-book?

A. Not with me.

Q. Could you produce it this afternoon?

A. Not very well.

Q. What is the difficulty about it? You mentioned awhile ago that you had a book at home.

A. I have a bank-book here, but in the Capital State.

Q. Well, whatever bank-book that shows your account in 1902.

A. I haven't got that.

Q. At what bank did you keep your account in 1901 and 1902?

A. With the Capital State mostly.

Q. That was the only bank you did business with?

A. Not the only bank—mostly.

Q. What other bank was there?

A. I don't remember.

Q. Did you finish dealing with the Capital State in 1902?

A. I'm sorry I didn't.

Q. You had trouble, did you?

A. I did.

Q. Well, now, Mr. Starn, this original deposit, I believe, in the Capital State was the proceeds from

(Testimony of Edward H. Starn.)

the sale of a certain ranch you had sold, was it not?

A. I couldn't say about that.

Q. You remember you did sell a ranch in 1899, wasn't it?

A. About that time.

Q. And you got something like \$1000 in cash?

A. I think so.

Q. And there was a mortgage for \$2000 to secure the balance of the purchase money?

A. Yes, sir, that's it.

Q. Do you remember when that mortgage was paid?

A. It was paid some time before it was due; I don't remember when it was paid.

Q. In what year?

A. I couldn't tell you that.

Q. Was it paid prior to 1902?

A. Yes, it might have been, yes.

Q. How long did the mortgage run, do you remember?

A. It was to go three years, as I remember.

Q. That would make it due in 1902. It was paid before maturity, I understand?

A. I don't remember about that.

Q. Did the proceeds of that mortgage go into the Capital State Bank?

A. I don't know—

Q. Do you remember that in January, 1902, you deposited \$1000 in the Capital State Bank?

A. I don't remember it.

Q. Do you remember that on the 30th of June, 1902, you checked out your balance in the Capital State Bank?

A. I do not.

(Testimony of Edward H. Starn.)

Q. You can't say then whether or not your account at the Capital State Bank was closed in the summer of 1902?

A. It might have been with the bank-book, but I think I dealt with certificates after that.

Q. You mean that in place of making a deposit subject to check you would take a certificate of deposit?

A. I think I did, if I remember right.

Q. Is it your recollection that at the time you came to pay for this land you had some certificates of deposit at the Capital State Bank?

A. I think I had a certificate of deposit.

Q. And you used those in payment for the lands?

A. Yes, sir.

Q. That is the reason you didn't draw a check on the Capital State Bank?

A. That's the reason I didn't remember drawing a check, I suppose.

Q. How many certificates did you have?

A. I don't remember that.

Q. Do you remember the amount of the outstanding certificates in your favor in October, 1902?

A. No, I don't.

Q. Can't you approximate it in any way?

A. Well, it was at least \$500.

Q. You couldn't say how much more?

A. No.

Q. And you couldn't find your bank-book of 1902?

A. I think I could.

Q. Can you produce it for us?

(Testimony of Edward H. Starn.)

A. I think I could. I think you got it there, though, in my testimony in the sweat-box, that is where you got it. I showed it to Mr. Johnson.

Q. Did you leave it with Mr. Johnson?

A. No, I didn't leave it with Mr. Johnson.

Q. Understand, Mr. Starn, I don't know anything about this except what I get here.

A. Certainly, I remember showing the bank-book to Mr. Johnson and I know now that you have it there.

Mr. BUNDY.—So that you have told this whole matter just as you told it on the stand to the representatives of the Government before?

A. I told it in what was called the sweat-box, yes.

Mr. BUNDY.—And in the sweat-box they asked you questions?

A. I told it to the best of my knowledge, and also proved some things by my bank-book.

Mr. BUNDY.—And you told them that you bought this land with your own money and nobody else had any interest in it?

A. Certainly.

Q. And still they have subpoenaed you to testify here? A. Yes, sir.

Mr. GORDON.—Complainant offers in evidence the sworn statement of Edward H. Starn, dated September 6, 1902, his testimony before the land office, dated December 18, 1902, the cross-examination thereto, testimony of other witness attached, the register's and receiver's receipts, dated December 18, 1902, and the deed of Edward H. Starn and wife,

(Testimony of Edward H. Starn.)

Mary Starn, to Horace S. Rand, dated February 18, 1903, to the northwest quarter of section 10, and the southeast quarter of section 10, township 7 north of range 8 east, Boise Meridian, and the patent. That embraces his wife's property too.

(Edward H. Starn papers marked Plaintiff's Exhibit No. 46A to 46K inclusive.)

Here an adjournment was taken until two o'clock, at which time court met, the Examiner and counsel for the respective parties being present.

[Testimony of Elizabeth Schmelzel, on Behalf of the Complainant.]

ELIZABETH SCHMELZEL, a witness produced on behalf of the complainant, being first duly sworn, testified as follows:

Direct Examination.

(By Mr. GORDON.)

Q. Mrs. Schmelzel, your name is Elizabeth Schmelzel? A. Yes, sir.

Q. Are you married? A. Yes, sir.

Q. Were you married in 1902?

A. Yes, sir.

Q. You took up a timber and stone claim in 1902?

A. Yes, sir.

Q. I show you paper dated October 3d, 1902, signed Elizabeth Schmelzel. A. Yes.

Q. Timber and stone land sworn statement. Is that your signature? A. Yes.

Q. I show you testimony given by Elizabeth Schmelzel before the land office February 16, 1903,

(Testimony of Elizabeth Schmelzel.)

and ask you if that is your signature to that.

A. Yes, sir.

Q. I show you deed dated February 25, 1903, made by Henry A. Schmelzel and Elizabeth, his wife, to Horace S. Rand. Is that your signature and that of your husband?

A. Yes, sir.

Q. Did your husband take up a claim at the same time you did?

A. No, sir.

Q. Did he ever take up a timber and stone claim?

A. No, sir.

Q. How long before you filed on this claim did you go up to view the land?

A. We went in September, 1902.

Q. September?

A. 1902.

Q. Do you remember the date?

A. No, I do not.

Q. Were you there in April, 1902?

A. No.

Q. Who first spoke with you about taking up one of these claims?

A. Mr. Sullivan and Mr. Beckley.

Q. Do you know Mr. Beckley's first name?

A. Charles.

Q. Do you know Mr. Sullivan's first name?

A. Joseph.

Q. And they were together when they spoke to you about this?

A. Yes, sir.

Q. Where was this conversation?

A. I think at Mr. Beckley's home, or at Mr. Sullivan's; we were friends and together a great deal.

Q. And did they tell you how much it would cost you to take up one of these claims?

(Testimony of Elizabeth Schmelzel.)

Mr. BUNDY.—That is objected to as incompetent, irrelevant, and immaterial, and calling for hearsay evidence with other parties than the defendants in this action.

A. I think they did.

Q. Do you know how much they told you it would cost?

A. I think they told me it would be \$2.50 an acre.

Q. Did they tell you about locating?

A. They told me I would have to pay a location fee.

Q. Did they tell you how much it was?

A. I don't think so.

Q. Did they tell you who the locator was?

A. No, sir.

Q. Who arranged the party?

A. Mr. and Mrs. Sullivan, Mr. and Mrs. Beckley, and I came over from South Boise and went with them.

Q. What was your husband's business at that time? A. Electrician.

Q. How long had you lived in Boise?

A. I guess ten years before.

Q. And who located you? A. Mr. Downs.

Q. Mr. Patrick Downs? A. Yes, sir.

Q. And where did you go to see Mr. Downs?

A. About locating us?

Q. Yes.

A. I had never seen Mr. Downs until we went up to take our timber claims.

Q. What town or city was it that you went to?

(Testimony of Elizabeth Schmelzel.)

A. We went to Kempner's ranch and stayed there, and from there went to Crooked river.

Q. How far beyond, do you know?

A. Maybe ten miles.

Q. Did he tell you how much it would cost to locate? A. No, sir.

Q. Your husband had attended to that, I assume.

A. I think he did.

Q. And then you were taken out and shown over this land? A. Yes, sir.

Q. How many were with the party?

A. Six, counting Mr. Downs.

Q. And he carried you to a claim and said "this is the one you will be located on"?

A. He took us all over the land.

Q. Took each one over a claim or over the claims, all the claims? A. All the claims.

Q. And when you got to one claim it was understood that was the claim one of the party was to take?

A. Yes, sir.

Q. Did he give you a description of it there?

A. Yes, after we got back to the ranch he did.

Q. And what did you do with the description?

A. Brought it to Boise with us.

Q. Who prepared your original sworn statement, this first paper I have shown you? Do you know who wrote that? A. Mr. Wells.

Q. Mr. John I. Wells?

A. I think so.

Q. Where did you see Mr. Wells?

A. We went to Mr. Wells' office.

(Testimony of Elizabeth Schmelzel.)

Q. Did Mr. Downs direct you to Mr. Wells?

A. I think he did.

Q. And was that the day after you returned?

A. I don't think so.

Q. How many days, to your best recollection?

A. I don't know—I think it was a week after we came back.

Q. And do you remember whether all of you went to Mr. Wells' office, or did you and your husband go alone?

A. I don't believe Mr. Schmelzel went, but I think Mrs. Beckley and Mrs. Sullivan went with me.

Q. And did he give them a similar paper?

A. I think he did.

Q. Was the paper drawn when you went there or did you wait for it?

A. We waited for it.

Q. And Mr. Wells drew it?

A. I think so, yes.

Q. Do you know Mr. Wells when you see him?

A. When I see him, yes.

Q. Did you take your descriptions of the land there, or did Mr. Wells have them there?

A. We took them with us.

Q. Mr. Wells wasn't up at Kempner's when you were there that you saw?

A. I had never seen Mr. Wells before.

Q. Then you went to the land office and filed that paper that I have just shown you?

A. Yes, sir.

Q. And how long after that was it before you proved up?

(Testimony of Elizabeth Schmelzel.)

A. I really don't remember exactly.

Q. Thirty or sixty days?

A. Something like that.

Q. Who went to the land office with you then?

A. I think Mr. and Mrs. Beckley and Mr. and Mrs. Sullivan.

Q. Do you remember how much money you paid at the land office at that time?

A. I thought \$450, but I am not sure; I couldn't swear to it—as near as I could remember.

Q. And where did you get that money which you paid? A. Out of the bank.

Q. Did you draw a check, or did you borrow it?

A. A check; it was our own money.

Q. Did you draw the money out, or did your husband? A. I think I did.

Q. At that time did you have a joint deposit?

A. Yes, and Mr. Schmelzel was out of the city.

Q. Do you remember which bank you did your banking with? A. First National Bank.

Q. And you have a distinct recollection that you drew it out of the bank?

A. I drew the check I am almost sure.

Q. Do you remember going to the bank and getting the money? A. Yes, sir.

Q. Did you go from the bank to the land office, or was it done the same day?

A. I don't know about that.

Q. What is your best recollection?

A. I think I did, though.

Q. Now, you subsequently sold this property.

(Testimony of Elizabeth Schmelzel.)

Who told you that you could sell it?

A. Mr. Sullivan and Mr. Beckley.

Q. When did they tell you that?

A. Some time after we had proved up on it.

Q. You hadn't ever known that you could sell it before?

A. I hoped that I could when I took it up; I wasn't sure that I was going to sell it, but I wanted to if I could.

Q. Who did they tell you you could sell it to?

A. They told me they knew of several buyers; they told me to go and see Mr. Kinkaid, and I heard about Mr. Pritchard.

Q. Who told you about Mr. Pritchard?

A. I think they did.

Q. Did they tell you of anybody else that was buying it?

A. Someone else, but I can't remember who it was.

Q. Mr. Wells? A. No, not Mr. Wells.

Q. Which one did you go to see?

A. Mr. Kinkaid.

Q. Did you go alone or with your husband?

A. I went alone. Mr. Schmelzel wasn't in town.

Q. What did Mr. Kinkaid say to you?

A. He said he would buy the land.

Q. Did you sell it to him the day you were there?

A. I don't think so.

Q. Tell us, as best you can, what happened when you went to see Mr. Kinkaid.

A. I just told him I heard he was buying some

(Testimony of Elizabeth Schmelzel.)

timber claims, and he said he was, and I asked him how much he would pay me, and he told me, and, as near as I can remember, it was \$800.

Q. And did you agree to sell it at that time?

A. Yes.

Q. Do you remember going back again after that?

A. I think I took my papers back.

Q. The same day? A. No, sir.

Q. How long? A. Maybe a week later.

Q. Was that before you got your final receipt?

A. Yes.

Q. And you understood that when you got your final receipt you were to go back there and he would buy it? A. Yes, sir.

Q. Did you leave any receipt there when you went the first time? A. No, sir.

Q. Sign any paper there? A. No, sir.

Q. Had your husband returned when you signed this deed or did he sign subsequently?

A. I don't know about that; Mr. Schmelzel signed, but I don't remember whether he was here at that time or not.

Q. See if you can remember if you went there together when you signed the deed, or whether he went there on some other occasion after he returned.

A. I don't know how it was. We had to send some deeds out in the country to be signed, and I don't know whether we sent these or not.

Q. Out to where he was?

A. To where he was. I don't know whether this is one—we sold some property at the same time.

(Testimony of Elizabeth Schmelzel.)

That is Mr. Schmelzel's signature though.

Q. And this was acknowledged before L. M. Pritchard?
A. I don't know Mr. Pritchard.

Q. Had you ever met Mr. Kinkaid before?

A. I had seen him a few times.

Q. Had you been introduced to him—did you know him?
A. No, I knew of him.

Q. Now, going back to the time that you made your final proof and the time you drew the money from the bank, you said that your husband, as you remembered, was out of town at that time?

A. I think so.

Q. Do you remember how long he had been out of town?

A. He went away the first of the year, the first of January.

Q. He went away the first of January, 1903?

A. Yes.

Q. How long was it before he returned?

A. I don't know.

Q. Your best recollection. I mean, whether in February, March, April, or May, or the summer.

A. I couldn't say; I don't know how long he stayed away, but I think until some time in the summer.

Q. Where was he?
A. Horse Shoe Bend.

Q. How far is that from here?

A. About thirty miles.

Q. You didn't pay anything for having these papers prepared, either the deed or the original paper Mr. Wells prepared for you?

(Testimony of Elizabeth Schmelzel.)

A. Not that I remember.

Q. Did you ever make any other deed to this property, or were you ever asked to make another deed to this property by Mr. Kinkaid or anyone else?

A. No.

Mr. GORDON.—Complainant offers in evidence the sworn statement of Mrs. Elizabeth Schmelzel, dated October 3, 1902, and her testimony before the land office, the cross-examination attached thereto, the non-mineral affidavit, the register's and receiver's certificates, dated February 16, 1903, and the deed which Mrs. Schmelzel identified, dated February 25, 1903, and the patent, all relating to the southeast quarter of section 27, township 7 north of range 8 east, Boise Meridian.

(Elizabeth Schmelzel papers marked Plaintiff's Exhibit No. 47A to 47H inclusive.)

Cross-examination.

(By Mr. FRASER.)

Q. How long have you lived in Boise, Mrs. Schmelzel? A. About twenty years.

Q. You are pretty well acquainted with the people of the city?

A. I know them all pretty near.

Q. Before you went out to file on this land had you heard it talked about for some time among your lady friends that timber was being taken up up in the Basin? A. It was discussed everywhere.

Q. Wasn't there quite a rush at that time by the ladies of Boise City to get these timber claims?

A. We met quite a few going and coming.

(Testimony of Elizabeth Schmelzel.)

Q. What class of people was it that was taking them up—the well-to-do people of the city?

A. Mostly.

Q. The people of means? A. Yes.

Q. Whose husbands were engaged in business?

A. Yes.

Q. At the time you filed this first paper in the land office the question was asked you here, and I will call your attention to it, and ask you if this was true at the time you made it. Among other things, it says: "That I have not, directly or indirectly, made any agreement or contract, or in any way or manner, with any person or persons whomsoever, by which the title I may acquire from the Government of the United States may inure in whole or in part to the benefit of any person except myself." That was true when you made it? A. Yes, sir.

Q. You didn't enter this land under an agreement with any person, did you? A. No.

Q. Your friends had insisted upon your making this entry? A. No.

Q. You made it of your own free will and volition? A. Yes.

Q. For the reason that they thought you could sell it and make a profit? A. Yes, sir.

Q. In regard to the money, you think you went to the bank and drew out the money to prove up with? A. I am sure I did.

Q. And for years previously your husband kept a bank account at the First National Bank?

A. Always has.

(Testimony of Elizabeth Schmelzel.)

Q. And whenever he was out of town you would go down to the bank and draw out any amount you saw fit? A. Always did.

Q. So that when you needed this money you went down to the bank and drew it? A. Yes, sir.

Q. And when your husband was away you were in telephone communication?

A. Always, every day.

Q. And you hadn't any agreement with any person, firm or corporation by which the title was to go to them or they were to have any interest in it?

A. No, sir.

Q. You didn't try to sell it until after you proved up? A. No, sir.

Q. And then you went up to Mr. Kinkaid?

A. Yes, sir.

Q. You say you didn't know Mr. Pritchard at all?

A. Didn't know him; never had seen him.

Q. Never had seen Mr. Pritchard before?

A. No, sir.

Q. Did your husband take up a claim?

A. No, he didn't.

Q. At that time it was considered a kind of a picnic excursion for the ladies to go up and take up timber claims, wasn't it?

A. That's what we made out of ours, a picnic.

Q. A little outing and a good time?

A. Yes, sir.

Q. And they were generally doing it around the city? A. Parties everywhere.

(Witness excused.)

[Testimony of Mary Starn, on Behalf of the Complainant.]

MARY STARN, produced as a witness on behalf of the complainant, being first duly sworn, testified as follows:

Direct Examination.

(By Mr. GORDON.)

Q. You are Mrs. Mary Starn? A. Yes, sir.

Q. And you are the wife of Mr. Edward H. Starn, who testified here this morning? A. Yes, sir.

Q. You took up a timber and stone claim, did you? A. Yes, sir.

Q. I show you timber and stone land sworn statement, dated September 6, 1902, and ask you if that is your signature to it? A. Yes, sir.

Q. And you filed that in the land office?

A. Yes, sir.

Q. I show you testimony of Mary Starn before the land office, dated December 18, 1902; is that your signature to that? A. Yes, sir.

Q. I show you the cross-examination taken before the land office, signed Mary Starn; did you sign that?

A. Yes, sir.

Q. Mrs. Starn, who made out the original sworn statement, the first paper you filed in the land office?

A. I couldn't tell you.

Q. Do you know where you first saw that paper (showing witness paper)?

A. No, I don't. James King, I guess—

Q. Did he prepare that paper for you?

(Testimony of Mary Starn.)

A. I couldn't tell you; I don't know anything about it.

Q. To question seventeen of the cross-examination, to which your signature is attached, which is: "Where did you get the money with which to pay for this land, and how long have you had it in your actual possession?" The answer is: "My husband gave me the money last fall." Is that true?

A. Yes, sir.

Mr. BUNDY.—I object to that as incompetent, irrelevant and immaterial.

Mr. GORDON.—Q. That is true, is it?

A. He said I might have the money, that it was in the bank.

Q. Well, as to that question? A. Yes.

Q. And the next question: "Have you kept a bank account during the past six months, and, if so, where?" "Yes, Capital State Bank, Boise." Is that true?

A. I was mistaken in that; it wasn't in my name.

Mr. BUNDY.—Q. Your husband had it?

A. Yes, my husband had it.

Mr. GORDON.—Q. Did you know your husband had a bank account in that bank at that time?

A. Yes, he generally keeps it in the Capital State Bank.

Q. Do you know whether he has one there?

A. I am pretty sure he has.

Mr. BUNDY.—Q. You are only getting partial payments, aren't you? A. Yes, sir.

Mr. GORDON.—But you are sure he had one at

(Testimony of Mary Starn.)

the time he made that statement?

A. Yes, he had a certificate.

Q. I am asking about a bank account.

A. No, he didn't have no bank account—he just had a certificate.

Q. Here is the question: "Have you kept a bank account during the past six months, and if so, where?" Answer: "Yes, Capital State Bank, Boise."

A. Well, I thought he did have, but it wasn't; it was a certificate.

Mr. FRASER.—Certificate of deposit?

A. Yes.

Mr. GORDON.—Q. Now, who located you on this land? A. Mr. Downs.

Q. Did you pay him \$25 for locating you?

A. My husband looked after that.

Q. After you went up to view this land and Mr. Downs located you on it and you came back, did you see Mr. Wells?

A. I don't know Mr. Wells—never saw him.

Q. Did you make any arrangements about selling this land to anyone? A. No, sir.

Q. Not at any time? A. No, sir.

Q. You signed the deed for it?

A. Yes, sir.

Q. And where did you sign that deed?

A. Well, I couldn't tell you just what office it was in.

Q. Did you go to somebody's office?

A. Yes, sir.

(Testimony of Mary Starn.)

Q. And were you given any money when you signed the deed? A. No, my husband got it.

Q. Did you get it? A. We both got it.

Q. I mean, did he physically give you some money in your own hand?

A. No, all together we got it.

Q. I will ask you if you signed an affidavit, dated December 18, 1902. Is that your signature (showing witness paper)? A. I believe it is.

Mr. GORDON.—We offer in evidence the sworn statement of Mrs. Mary Starn, dated September 6, 1902, her testimony before the land office, dated December 18, 1902, the cross-examination attached, signed by her, the testimony of the witnesses before the land office, the non-mineral affidavit, and affidavit signed by Mrs. Mary Starn, dated December 18, 1902, the register's and receiver's certificates, dated December 18, 1902, and the patent to the southeast quarter of section 10, township 7 north of range 8 east, Boise Meridian.

(Mary Starn papers marked Plaintiff's Exhibit No. 48A to 48K, inclusive.)

Cross-examination.

(By Mr. BUNDY.)

Q. Mrs. Starn, the answers you made there before the land office to the papers were true, were they not—the answers you made at the time you proved up were true to your best knowledge and belief?

A. Yes.

Q. It is claimed by the Government in this lawsuit we are trying that you made an entry under

(Testimony of Mary Starn.)

this Timber and Stone Act under an agreement by which you had promised to turn over the title as soon as you got it to the Barber Lumber Company and other people. Is that true or false?

A. It is false.

(Witness excused.)

[Testimony of Arietta H. Stahl, on Behalf of the Complainant.]

ARIETTA H. STAHL, produced as a witness on behalf of the complainant, being first duly sworn, testified as follows:

Direct Examination.

(By Mr. GORDON.)

Q. Mrs. Stahl, you are Mrs. Arietta H. Stahl?

A. Yes, sir.

Q. What is your husband's name?

A. Benjamin E. Stahl.

Q. And you made a timber and stone sworn statement September 22, 1902?

A. Yes, sir.

Q. Is that your signature to it (showing witness paper)?

A. Yes, sir.

Q. I show you testimony taken before the land office, signed Arietta H. Stahl, dated March 17, 1903, and ask you if that is your signature to that?

A. Yes, sir.

Q. And to the cross-examination signed Arietta H. Stahl; is that your signature?

A. Yes, sir.

Q. And to the deed, dated March 25, signed Benjamin E. Stahl and Arietta H. Stahl; are they your signatures—is that your husband's signature?

(Testimony of Arietta H. Stahl.)

A. Yes, sir. I think so.

Q. Mrs. Stahl, who first spoke with you about taking up this claim?

A. Our neighbors—Mr. Starn.

Q. The gentleman who has just left?

A. Yes, sir.

Q. What did he say about it?

A. Well, he said he had been—that was about all.

Q. He had been where?

A. Up on the mountain, locating timber.

Q. Did he tell you what you could sell it for?

A. No, sir.

Q. And who went with you when you went to locate? A. My husband, Mr. Stahl.

Q. No one else? A. No, sir.

Q. Did you know who was going to locate you before you started? A. Yes, sir.

Q. Who? A. Mr. Downs.

Q. Who told you Mr. Downs was to locate you?

A. We learned through Mr. Starn.

Q. You knew how much it would cost you to locate?

A. I don't remember whether there was anything said about that.

Q. And you went up to see Mr. Downs?

A. I did not; Mr. Stahl did.

Q. You saw him in the city?

A. Yes, sir.

Q. And it was arranged that you should go up to view this land? A. Yes, sir.

Q. And you and your husband went?

(Testimony of Arietta H. Stahl.)

A. Yes, sir.

Q. Did you meet him there?

A. Yes, met him the next day after.

Q. Did you go to Kempner's ranch?

A. Yes, sir, went there and camped and fished.

Q. How long were you up there?

A. We were gone five days.

Q. Then you were taken over the land and descriptions of it given to you by Mr. Downs?

A. Yes, sir.

Q. Do you remember who prepared this first statement that I just showed you?

A. No, sir, I do not.

Q. Do you know where you first saw it?

A. No, I couldn't locate the office; it was on Main street.

Q. Would you know the man you got it from if you saw him?

A. No, I don't believe I would.

Q. Do you know Mr. Wells when you see him?

A. No, sir.

Q. Was the paper prepared and there when you went there to get it?

A. I can't say; I don't remember.

Q. Do you remember who went to this office with you to get the paper?

A. Mr. Stahl.

Q. Do you remember who told you to go to that office to get it?

A. No, sir.

Q. Did you have any talk with Mr. Downs about going there to get it?

A. No, sir.

Q. Did you take your description that Mr.

(Testimony of Arietta H. Stahl.)

Downs gave you there? A. No, sir.

Q. Was it already there?

A. It must have been—I don't remember.

Q. Have you ever met Mr. John I. Wells?

A. No, sir.

Q. Mr. Kinkaid?

A. In Mr. Kinkaid's office, yes.

Q. You have been in Mr. Kinkaid's office?

A. Yes, seven years ago.

Q. And you met Mr. Kinkaid there?

A. Yes, I wouldn't know him now—

Q. Did you meet anybody else there?

A. No, sir.

Q. Now, you remember after filing this paper, after a lapse of time, you went to the land office and made your final proof? A. Yes, sir.

Q. Do you remember how much you paid in at that time?

A. No, I do not. I didn't handle the money; I think it was something like four hundred dollars.

Q. Do you remember where you got the money?

A. Yes, sir, I presume we got it at the bank, Mr. Stahl did.

Q. Do you remember when Mr. Stahl got it out of the bank?

A. No, I presume just shortly before he paid it in, the same day likely.

Q. He paid for your entry? A. Yes, sir.

Q. And did you have a bank account?

A. Individually?

Q. Yes.

(Testimony of Arietta H. Stahl.)

A. No, sir, we do not have but one.

Q. And that is in Mr. Stahl's name?

A. Yes, sir.

Q. Do you know how long Mr. Stahl had had that money in the bank?

A. Oh, a number of years. He always has some there. I don't know just how long he had had that particular amount.

Q. Did I understand that you went to Mr. Kinkaid's office? A. Yes, sir.

Q. Had you had any arrangement with Mr. Kinkaid about selling this land? A. No, sir.

Q. Had you talked with anyone about selling it before? A. No, sir.

Q. And you went there, and do you know how much you were paid for the land?

A. \$400 a claim I think.

Q. Do you remember whether it was given you in cash? A. No, sir, it was a check.

Q. Were you given just one check or two checks?

A. I can't say; I didn't have anything to do with that part of it at all.

Q. Your husband got your \$400 and kept his too, did he? A. Yes, sir.

Q. And you signed this deed there the day the money was paid over? A. Yes, sir.

Q. And did you ever sign any other deed for this property? A. I did not, no, sir.

Q. Did you ever make any other entry under the Timber and Stone Act? A. No, sir.

Q. Were you ever asked to sign another deed to

(Testimony of Arietta H. Stahl.)

this property? A. No, sir.

Q. Did you know Mr. Harry Worthman?

A. Yes, sir.

Q. Did you prepare any papers in connection with this land in his office?

A. I think we did.

Q. Do you know what it was?

A. No, I do not.

Q. Do you remember whether it was that sworn statement, the first paper I showed you?

A. No, I couldn't say.

Mr. GORDON.—Complainant offers in evidence sworn statement of Arietta H. Stahl, dated September 29, 1902; her testimony before the land office, dated March 17, 1903; and the cross-examination signed by her, attached; the testimony of the witnesses before the land office; non-mineral affidavit of Mrs. Arietta H. Stahl; the register's and receiver's certificates, dated March 17, 1903; the patent; and the deed, dated March 25, 1903, made by Arietta H. Stahl, and Benjamin E. Stahl. I will read the land of Mrs. Stahl, and then say that the deed includes some other: The east half of the southwest quarter, lots 3 and 4, section 7, township 7 north of range 8 east, Boise Meridian; also the deed contains the southwest quarter of section 8, township 7 north of range 8 east, Boise Meridian.

(Arietta H. Stahl papers marked Plaintiff's Exhibit No. 49A to 49O, inclusive.)

Mr. GORDON.—Q. Mrs. Stahl, did you ever meet Horace S. Rand? A. No, sir.

(Testimony of Arietta H. Stahl.)

Q. Did you ever have any dealings or transactions with him in any way whatever?

A. No, sir.

Cross-examination.

(By Mr. BUNDY.)

Q. This deed just shown you, Mrs. Stahl, is a deed to Horace S. Rand. I suppose you mean you had no transactions with him except that deed?

A. No, sir.

Q. And the negotiations, as I understand it, were not with Mr. Rand personally, but were with Mr. Kinkaid?

A. I don't understand.

Q. You said you didn't have any business transactions with Mr. Rand?

A. No, sir, I did not personally.

Q. I was just calling your attention to the fact that this deed was a deed to Mr. Rand, so I suppose you mean except this deed, but you had nothing to do with Mr. Rand personally?

A. No, sir.

Q. Mrs. Stahl, there is not much to ask you except this: The Government claims in this lawsuit we are trying, and it is charged in the bill of complaint, that you made your entry of this timber and stone land under an agreement that as soon as you got title you would turn it over to the Barber Lumber Company or some of the other defendants. I just wanted to ask you if that is true or false?

A. It is false.

Q. You said when you came down from looking at this land you went to Mr. Kinkaid's and had this paper made out, and Mr. Gordon asked you if you

(Testimony of Arietta H. Stahl.)

brought down the description or whether it was there.

A. It was there; it must have been.

Q. Mr. Downs may have given it to your husband, for all you know? A. Yes, sir.

Q. You and your husband went up, as I understand, alone? A. Yes, sir, alone.

Q. Take your own rig? A. Yes, sir.

Q. And paying Mr. Downs the locating fee and the other expenses, your husband paid for that?

A. Yes, sir.

Q. Did you combine a little picnic and fishing trip with this? A. Yes, sir.

Q. How long were you gone?

A. Five days.

Q. And during that time you hunted and fished and combined business with pleasure?

A. Yes, sir.

Q. That was being generally done here by the people of Boise, wasn't it? A. Yes, sir.

(Witness excused.)

[Testimony of Benjamin E. Stahl, on Behalf of the Complainant.]

BENJAMIN E. STAHL, produced as a witness on behalf of the complainant, being first duly sworn, testified as follows:

Direct Examination.

(By Mr. GORDON.)

Q. I will ask you, Mr. Stahl, if that is your signature to deed, dated March 25, 1903 (showing witness paper)? A. Yes, sir.

Q. Your name is Benjamin E. Stahl?

(Testimony of Benjamin E. Stahl.)

A. Yes, sir.

Q. Where do you reside, Mr. Stahl?

A. 509 South Thirteenth Street, Boise.

Q. How long have you resided in Boise?

A. Sixteen years nearly, I think, that is, off and on.

Q. What is your occupation?

A. Before I came here miner.

Q. I will ask you if you entered a claim under the Timber and Stone Act, and show you sworn statement, signed Benjamin E. Stahl, dated September 27, 1902, and ask you if that is your signature to it?

A. Yes, sir, that is my signature.

Q. And you filed that paper in the land office?

A. I did.

Q. I show you testimony of Benjamin E. Stahl, taken before the land office, March 17, 1903, and ask you if that is your signature to that?

A. Yes, sir.

Q. I show you cross-examination taken before the land office and sworn to March 17th, 1903; is that your signature to that?

A. Yes, sir.

Q. Who first spoke with you about taking up a timber claim?

A. Mr. Starn.

Q. What did he tell you about it?

A. He said they were taking up claims in the Basin, or above, on Crooked River, and he said quite a number of them, and I wanted to know if I could get one, and he told me he didn't know, that he would see Mr. Downs.

(Testimony of Benjamin E. Stahl.)

Q. And did he see Mr. Downs? A. I did.

Q. Did you go with Mr. Starn?

A. I went with Mr. Starn, I think; I ain't positive, but I think I did.

Q. What did Mr. Downs have to say?

A. He said he had two claims about two miles from where I would camp and he would save them. They was for old people, you know. I was very poorly then, and he would save those two for me, myself and wife.

Q. Did you understand that he owned the claims or had anything to do with them, or just show them to you? A. Just simply a locator.

Q. And you went up with your wife to locate on these claims? A. Yes, sir.

Q. Or to be located?

A. To be located.

Q. And did you know before you started how much it would cost you?

A. I knew it would cost me \$2.50 an acre.

Q. Did you know how much it would cost you to pay the locator?

A. Yes, sir, I knew it would cost me \$25 apiece, or \$50 for the two.

Q. Did you pay that to anyone, the \$50?

A. I did after I located.

Q. Who did you pay?

A. I think I paid it to Mr. Wells. I ain't certain. I thought they were in partnership together, because he gave me a letter to Mr. Wells.

Q. Did I understand you to say he gave you a

(Testimony of Benjamin E. Stahl.)

letter to take to Mr. Wells?

A. I think so—something anyway.

Q. Well, now, you located and then went back to Boise?

A. Yes, I went back the next day, yes.

Q. How long were you up there at Kempner's?

A. Two days, I think.

Q. A couple of days? A. Yes, sir.

Q. And then the day after you got back here did you go to Mr. Wells' office?

A. I don't recollect whether I went the next day or not.

Q. How long after, your best recollection?

A. In the course of two or three days, I guess.

Q. And you took the letter Mr. Downs gave you?

A. Something he gave me. I ain't positive about it either, whether he gave me any or not; it runs in my mind that way anyway.

Q. This sworn statement that you have identified, do you know who prepared that paper for you?

A. I think Mr. Wells. I ain't positive. Somebody did.

Q. Well, did you get that paper at Mr. Wells' office; to your best recollection?

A. I think so; I am not positive.

Q. And then you went to the land office and filed?

A. Yes, sir.

Q. Now, did you know of anybody that was purchasing this timber land at that time?

A. I knew there was parties purchasing it, yes.

Q. Who did you know that was purchasing it at that time?

(Testimony of Benjamin E. Stahl.)

A. There was no names mentioned that I know of.

Q. Had anyone told you that Mr. Downs and Mr. Wells were purchasing at that time?

A. No.

Q. Or Mr. Kinkaid?

A. No, sir, didn't know Mr. Kinkaid.

Q. Had anyone told you that they were purchasing it? A. No.

Q. Did you know Mr. Harry S. Worthman?

A. I knew of him, that is all.

Q. Were you ever in his office with relation to this property?

A. Not with this property. There was some Mr. Starn and I was thinking about down near Emmett. I had been in there about that—there was some agricultural land before this. There is where I met Mr. Worthman.

Q. Where?

A. You know there is a tract of land near Emmett that they were locating about that time, and Mr. Starn and I had been in his office in regard to that.

Mr. BUNDY.—Q. Agricultural land, you say?

A. Yes, sir.

Mr. GORDON.—Q. Do you remember whether Mr. Wells or Mr. Worthman prepared that sworn statement I have shown you?

A. I can't tell you whether it was Mr. Worthman or Mr. Wells; it was either one or the other.

Q. Do you remember whether Mr. Wells told you to go to Mr. Worthman's office and have that paper

(Testimony of Benjamin E. Stahl.)

prepared?

A. I think he did; I ain't positive. It was either one or the other. I know I didn't.

Q. Had anyone told you that some parties in Wisconsin were buying this property?

A. I tell you I know but very little about that till after I had got my claim. I simply started in two or three days after I saw Mr. Starn up to the mountains, and I talked very little about it to anyone. I don't recollect talking to anyone except Mr. Starn.

Q. Do you remember whether anyone told you that parties from Wisconsin were buying land up in the Basin?

A. After I had located my quarter, yes.

Q. Who told you that?

A. It was common talk on the street, I believe.

Q. You don't know any special person?

A. No, it was common talk.

Q. Then it came time to prove up on this land. The time came to prove up on this land, make your final proof?

A. Yes, sir.

Q. And you went to the land office?

A. I did.

Q. Did you take your wife with you?

A. Yes, sir.

Q. And you paid the money for her claim and your claim?

A. Yes, sir.

Q. Do you remember how much it was you paid?

A. Something like eight hundred for the two.

Q. How much?

(Testimony of Benjamin E. Stahl.)

A. Eight hundred dollars. I know mine was a fraction less, and her's was a little above a hundred and sixty.

Q. Where did you get that money with which you paid for those claims?

A. I got it mining, most of it.

Q. I mean, did you have it in your pockets at that time, or did you draw it out of the bank?

A. No, sir, it was in the Bank of Commerce.

Q. How long had it been in the Bank of Commerce?

A. I don't know; I guess quite a little while, a year probably, somewhere along there.

Q. And you subsequently sold this property?

A. I did.

Q. To whom did you sell it?

A. Well, I made the bargain with Mr. Kinkaid to sell it.

Q. How long had you known Mr. Kinkaid?

A. Well, just met him at the time I went to his office.

Q. Who told you to go to see Mr. Kinkaid?

A. Mr. Starn; he said he would probably find a party.

Q. And you went to see Mr. Kinkaid?

A. I did.

Q. How much did he offer you for your property? A. \$800 a claim.

Q. And was that the first time you had ever seen Mr. Kinkaid? A. It was.

Q. Did you go there with Mr. Starn?

(Testimony of Benjamin E. Stahl.)

A. No, sir, I went alone.

Q. Did you take any papers along with you when you went? A. No, sir.

Q. Did you ever take any papers to Mr. Kinkaid's office?

A. I think I did. I ain't positive; it has been a long time, and dog on if I can think of all them things.

Q. And did you settle with him right there?

A. I did, sir.

Q. You took your wife with you at that time?

A. Yes, sir.

Q. Did you know that Mr. Kinkaid would buy it before you went there?

A. I thought he was an agent of some sort, that's all; I didn't think he was buying it. I thought he was an agent of some party.

Q. Where did you get that information?

A. From Mr. Starn.

Q. Did he tell you who he was agent for?

A. No, sir.

Q. And you and your wife signed and acknowledged the deed that day? A. Yes, sir.

Q. Do you know whether Mr. Kinkaid gave you a check or cash? A. A check.

Q. Do you know whose check it was, whether it was his individual check?

A. By Jove, I can't recollect that. I have been trying to but I can't. He gave me a check and it was good all right.

Q. You got the money on it anyway?

(Testimony of Benjamin E. Stahl.)

A. It was there a year before I took it up.

Q. You put the money in the bank?

A. I did, in the First National.

Q. You put the check in the First National Bank?
A. Yes, sir.

Q. You didn't know Mr. Horace S. Rand?

A. No, sir.

Mr. GORDON.—We offer in evidence the sworn statement of Mr. Stahl, and his testimony before the land office, the cross-examination which he has identified here, the testimony of the witnesses, and the non-mineral affidavit, the register's and receiver's certificates, dated March 17, 1903, and the patent to the southwest quarter of section 8, township 7 north of range 8 east, Boise Meridian, the deed having been offered at the time Mrs. Stahl testified.

(Benjamin E. Stahl papers marked Plaintiff's Exhibit No. 50A to 50M inclusive.)

Mr. GORDON.—Q. Mr. Stahl, have you loaned any money to any persons to prove up on their claims?
A. Yes, sir, I did.

Q. To whom? A. Mr. Starn.

Q. What Mr. Starn—Edward Starn?

A. Edward Starn.

Q. Anyone else?

A. I believe Mr. Ownbey.

Q. Mr. Jackson Ownbey?

A. Yes, sir, a small amount, I don't recollect exactly.

(Testimony of Benjamin E. Stahl.)

Cross-examination.

(By Mr. BUNDY.)

Q. What is your age, Mr. Stahl?

A. Seventy-one.

Q. You made a bargain with Pat Downs as to the price that was to be paid him for locating you?

A. Yes, sir.

Q. And he sent down something to Mr. Wells, did he?

A. Yes, sir.

Q. Was that the description of the land, do you think?

A. I don't know I'm sure.

Q. Was it your understanding at that time that Mr. Downs and Mr. Wells were in partnership in this locating business?

A. I supposed so, yes.

Q. That was the reason you supposed you was to go to him and pay him?

A. Yes, sir.

Q. And you did pay Mr. Wells?

A. I did.

Q. Mr. Stahl, the Government of the United States, in the action we are trying, is charging you, with others, with having entered into an unlawful conspiracy to defraud the United States out of its timber lands. Is that allegation true or false?

A. It's false, as far as I am concerned.

Q. And the Government claims that you entered this timber and stone land under an agreement by which you promised that as soon as you got title you would turn it over to the Barber Lumber Company, or some of the other defendants. Is that true or false?

A. It is false.

(Witness excused.)

[**Testimony of Emma Bilderback, on Behalf of the Complainant.**]

EMMA BILDERBACK, produced as a witness on behalf of the complainant, being first duly sworn, testified as follows:

Direct Examination.

(By Mr. GORDON.)

Q. You are Mrs. Emma Bilderback?

A. Yes, sir.

Q. Have you a husband? A. Yes, sir.

Q. What is his name? A. George.

Q. Mrs. Bilderback, did you take up a claim under the Timber and Stone Act September 24, 1902?

A. I did.

Q. I show you sworn statement of that date, and ask you if that is your signature to it. A. Yes.

Q. I show you testimony before the land office, dated January 28, 1903, and ask you if you signed that. A. That is my signature.

Q. And the cross-examination thereto—is that your signature to that? A. Yes, sir.

Q. I show you deed dated February 12, 1903, George Bilderback and wife, Emma Bilderback, to Horace S. Rand, and ask you if that is your signature to that deed? A. That is my signature.

Q. Is that also the signature of your husband?

A. Yes, sir.

Q. Mrs. Bilderback, who was the first person that spoke with you about taking up one of these claims? A. My brother.

Q. What is his name?

(Testimony of Emma Bilderback.)

A. George Bayhouse.

Q. What did he say about it?

A. He told me there was land to be taken up, and he was going up, and wanted to know if I wanted to go too, and I told him I did.

Q. Did he tell you how much it would cost you?

A. Not at that time.

Q. Did he tell you you could sell the land?

A. I don't remember—he said some time I could.

Q. Well, did he tell you you could take it up and get so much over and above what the expenses would be?

A. No, he didn't tell me how much.

Q. How long after your brother spoke with you did you take this land up?

A. It was about a week.

Q. Did he tell you to go to see someone about taking it up?

A. No.

Q. Who arranged the party that you went with?

A. It was amongst ourselves.

Q. Who were of the party?

A. My brother Frank Bayhouse, George Bayhouse, and Leila Bayhouse.

Q. Only the three of you went?

A. Four of us in the party, myself.

Q. Who drove, do you know?

A. One of my brothers, I don't know which one.

Q. And where did you go?

A. We went up above Idaho City.

Q. What was the name of the place you went to?

A. Kempner's ranch.

Q. And did you know who was going to locate

(Testimony of Emma Bilderback.)

you before you went there? Who did locate you?

A. Mr. Downs.

Q. How much did you give him?

A. I don't know; my brother tended to that for me. I gave him the money and he tended to that for me.

Q. When was that?

A. After we returned.

Q. Do you know how long after you returned?

A. No.

Q. Do you know how much it was?

A. It was \$25.

Q. Did your husband take up a claim at that time?

A. No, sir.

Q. Did he ever take up a claim?

A. No, sir.

Q. You say Mr. Downs located you on this—Mr. Patrick Downs?

A. Yes.

Q. And he took you over this timber land?

A. Yes.

Q. How many pieces did he show you?

A. How many pieces?

Q. Yes. Did he show you just one location and say "that's the one for you," or did he show you a number of them?

A. He showed me my own; he told me it was mine.

Q. And you went over that?

A. Yes, sir.

Q. Did he give you a description of it, or did he give the description to someone else?

A. I don't remember.

(Testimony of Emma Bilderback.)

Q. Did he tell you where to go to have your papers made out? A. No.

Q. Where did you go to have your papers made out? A. Up in the Pioneer Building.

Q. Do you know whose office?

A. I don't remember.

Q. You went there yourself?

A. I went there myself.

Q. Did you know the gentleman's name?

A. No, sir, I do not.

Q. Do you remember what sort of looking man he was? A. I couldn't remember.

Q. Who told you to go to that building to have your papers made out? A. My brother.

Q. Did he go with you?

A. I think not.

Q. Did you take a description there, or were the papers prepared when you arrived?

A. No, they were not.

Q. You waited for him to prepare them?

A. I don't remember that, whether I had to wait or not.

Q. Now, did you know Mr. John I. Wells?

A. No, sir.

Q. Did you ever meet him?

A. Never that I know of.

Q. Would you know him if you were to see him here now?

A. I never heard of him until I saw him here in this building. They told me it was Mr. Wells, but I don't remember him.

(Testimony of Emma Bilderback.)

Q. Did he go over this land with you?

A. I don't know. I don't remember the gentleman at all.

Q. Do you remember who went over the land with you besides Mr. Downs?

A. Mr. Downs, my brothers and sister. Do you mean outside of us?

Q. Yes.

A. I don't remember Mr. Wells. He may have been in the party, but I don't remember.

Q. He didn't go up with you, did he?

A. No.

Q. How far was this land that you went over from Kempner's ranch? A. I couldn't tell.

Q. Was it a hundred yards or three or four miles?

A. It was more than a few yards; it was some miles.

Q. Did you go in a wagon?

A. From there we went horseback, from Kempner's ranch.

Q. Can't you fix it in your mind who was of that party, how many there were?

A. There was Mr. Noble—I don't know whether he was with us, but he was there on our lands when we got there—Mr. Noble and Mr. Butler.

Q. Now, if Mr. Wells had been there and had gone along with that party horseback would you know whether he was there or not?

A. No, I can't remember.

Q. What is your best recollection, that he was or

(Testimony of Emma Bilderback.)

wasn't there? A. I couldn't say.

Q. You have no recollection about it?

A. No.

Q. Then these papers were prepared for you, this sworn statement, and you don't know who the gentleman was that prepared that for you?

A. No.

Q. Did you pay him anything, the gentleman who prepared that for you?

A. No, I don't think I did.

Q. Then you went to the land office?

A. Yes, sir.

Q. Who was at the land office when you filed your papers that you knew?

A. My sister in law was with me.

Q. What sister in law?

A. Mrs. Leila Bayhouse.

Q. Did she file on a claim at that time?

A. Yes, she filed at the same time.

Q. Who else?

A. No one that I can remember.

Q. Just the two of you went together?

A. Yes.

Q. And up to this time did you know of anybody that was buying claims? Had anybody told you that someone was buying claims? A. No.

Q. Then after that you made your final proof?

A. Yes.

Q. Now, do you remember the day you made that proof? A. I don't remember the day.

Q. I mean the occasion.

(Testimony of Emma Bilderback.)

A. Yes, I remember it.

Q. Do you remember going to the land office?

A. I remember going to the land office.

Q. Do you remember how much money you paid in at the land office?

A. When I got my filing papers?

Q. Yes. A. \$7.50.

Q. The second time?

A. \$400; whether it was more or not I don't know; it was \$400 I know.

Q. Now, did you pay that in check or in cash?

A. I paid it in cash.

Q. Do you remember where you got the money you paid it with?

A. It was my own money.

Q. Where did you get it from?

A. I made it, worked for it.

Q. Did you draw it out of the bank that day?

A. Yes.

Q. Which bank?

A. First National Bank.

Q. Your own check?

A. My own check.

Q. Do you know how long you had had that in the bank? A. You mean after I drew it?

Q. No, before you drew it, how long had it been in the bank before you drew it?

A. I don't know.

Q. Now, did you draw a check, or did you have a certificate of deposit? A. I had a check.

Q. Where did you get that check?

(Testimony of Emma Bilderback.)

A. Mr.—

Q. I mean when you went to prove up.

A. My own money?

Q. Yes. A. No, I had it in cash.

Q. Now, as I understood, you said that the day you proved up at the land office you went to the bank and got the money? A. Yes.

Q. Now, did you draw your own check?

A. No, I didn't have my money in the bank at that time. I did business at that bank, but my money was loaned to my own people.

Q. Who was it loaned to?

A. The Bayhouse Floral Company.

Q. Who did you get that money from that day?

A. I got it from a friend that loaned it to me until I got my money.

Q. Who was the friend that loaned it to you?

A. William Child.

Q. And how much did he loan you that day?

A. Four hundred dollars.

Q. Was that in cash? A. Yes

Q. And then you took that \$400 to the land office?

A. Yes.

Q. And how long after that was it that the loan that you had made was repaid you?

A. About a month.

Q. And who paid you that back?

A. My own people, the company.

Q. The company paid you that back about a month afterwards? A. Yes, sir.

Q. And then you repaid Mr. Child?

(Testimony of Emma Bilderback.)

A. Then, I repaid Mr. Child.

Q. Now, did some one give you a receiver's receipt in this transaction?

A. I don't remember.

Q. Did you have a cashier's certificate of deposit?

A. I don't remember.

Q. Then you sold this land, did you?

A. Yes.

Q. Who was the first person that spoke to you about selling it? A. My brother George.

Q. What did he say about it?

A. He said I could sell it if I wished, or that I could keep it.

Q. Did he tell you who you could sell to?

A. No, I didn't ask him.

Q. When you got ready to sell, who told you where to go to? A. My brother.

Q. Where did he tell you to go?

A. To Mr. Kincaid.

Q. Was that the first time you had ever met Mr. Kincaid? A. Yes, sir.

Q. Did you go to Mr. Kinkaid alone?

A. No, one of my brothers was with me; I don't know which one—and my sister in law.

Q. Did you all sell at that time?

A. Three of us at that time.

Q. What conversation did you have with Mr. Kinkaid about buying this property?

A. I don't know as I remember.

Q. How much did he give you? A. \$800.

Q. How did he give it to you?

(Testimony of Emma Bilderback.)

A. In check.

Q. On what bank?

A. First National Bank.

Q. And did that bank cash the check, or did you deposit it in your own bank?

A. Cashed the check.

Q. What did you do with the money?

A. I don't know whether I kept it or deposited it again just at that time—I don't remember.

Q. Did you ever make but the one deed to this property? Were you ever asked to make another deed?

A. No, sir.

Q. Did you know Mr. Louis M. Pritchard?

A. No, sir.

Q. Was the deed that you signed prepared when you arrived at Mr. Kinkaid's office?

A. I don't know.

Q. You don't remember?

A. No.

Q. Do you know how long you were at Mr. Kinkaid's office?

A. No, just a very short time.

Q. Ten minutes or a half hour?

A. Possibly.

Q. Did you all leave together?

A. Yes, sir.

Q. Did you all get your pay while you were there?

A. Yes, sir.

Mr. GORDON.—We offer in evidence the sworn statement of Mrs. Bilderback, dated September 24, 1902; her non-mineral affidavit of the same date; her testimony before the land office, dated January 28, 1903; the cross-examination signed by Mrs. Bilderback attached; the testimony of the witnesses before

(Testimony of Emma Bilderback.)

the land office; the register's and receiver's certificates, dated January 28, 1903; and the deed, dated February 12, 1903, made by George Bilderback and wife, Emma, to Horace S. Rand; and the patent, all to the north half of the southwest quarter of section 27, and the north half of the southeast quarter of section 28, township 7 north of range 8 east, Boise Meridian.

(Emma Bilderback papers marked Plaintiff's Exhibit No. 51A to 51O inclusive.)

Q. Did you know Mr. Horace S. Rand?

A. No, sir.

Q. Had you ever heard of him before?

A. No.

Q. Before this deed was made out, I mean?

A. No.

Q. Did you know you were selling to Mr. Rand?

A. No, I did not.

Cross-examination.

(By Mr. BUNDY.)

Q. You didn't care very much who you were deeding to at that time did you? You didn't care very much who he was buying it for did you?

A. No, I didn't care.

Q. Something was asked you about Mr. Wells being up there at the time you located your land. Have you any recollection of seeing him there?

A. I don't remember the gentleman at all.

Q. I guess he wasn't there. I don't know where Mr. Gordon got the idea. Mrs. Bilderback, the Government of the United States is charging you in this

(Testimony of Emma Bilderback.)

action with having entered into a conspiracy with a lot of other people in trying to defraud the Government out of a lot of timber land, and it is alleged that you made your entry under an agreement or understanding that when you got title that you would transfer your title to them or to some other person whom they would direct. Is that true or false?

A. I don't understand your question.

Q. Did you enter into any agreement with anybody by which you were to enter this land for their benefit?

A. No.

Q. It is alleged in this complaint that you made your timber and stone entry, not for your own benefit, but under an agreement that as soon as you got title you would turn it over to the Barber Lumber Company, or some of the other defendants. That isn't true, is it?

A. No.

Q. And in making your entry, you were acting solely for yourself?

A. Yes, sir.

Q. And your evidence before the land office at the time you got it was true?

A. Yes.

(Witness excused.)

[Testimony of Pearl I. Nusbaum, on Behalf of the Complainant.]

PEARL I. NUSBAUM, produced as a witness on behalf of the complainant, being first duly sworn, testified as follows:

Direct Examination.

(By Mr. GORDON.)

Q. You are Mrs. Pearl I. Nusbaum?

A. Yes.

(Testimony of Pearl I. Nusbaum.)

Q. And at that time was the wife of Jacob V. Nusbaum? A. Yes.

Q. And he has recently died? A. Yes.

Q. You made an entry under the Timber and Stone Act? A. Yes.

Q. I show you the sworn statement, dated October 7, 1902, and ask you if that is your signature to that? A. Yes, sir, it is.

Q. I show you testimony of Pearl I. Nusbaum before the land office, dated February 14, 1903, and ask you if that is your signature to that.

A. Yes.

Q. I show you the cross-examination and ask if that is your signature to that. A. Yes.

Q. Is that your signature and that of your husband to the deed dated February 16, 1903, made by Jacob V. Nusbaum and Pearl I., to Horace S. Rand? That is your signature and that is your husband's signature? A. Yes.

Q. Mrs. Nusbaum, who first spoke with you about taking up this timber and stone claim?

A. My husband.

Q. And did he tell you what you were to do with it after you got it? A. No, he didn't.

Q. Nothing said about selling it at that time?

A. Not at that time.

Q. And you went up to view this land with a party? A. Yes.

Q. And who were the persons that made up that party? A. Mr. and Mrs. Sensenig—

Q. Mrs. Sensenig is your sister in law?

(Testimony of Pearl I. Nusbaum.)

A. Yes. And Mrs. and Mr. Harry Eagleson, and Mr. and Mrs. Clyde Eagleson.

Q. And who located you on that land?

A. Mr. Downs.

Q. And do you know what was paid him for his trouble?

A. I do not.

Q. You were taken out and shown the land and located?

A. Yes.

Q. And were all of you in a party? Were you all located together?

A. All the women were, but I don't believe all the men were that day. I believe they were located the day before.

Q. Did you all go up together?

A. We all went up to Kempner's ranch together.

Q. And were you shown a number of pieces of property, or were you taken to a piece and they said "that is the piece for you to locate on"?

A. We were taken to this same piece of property.

Q. You were shown a piece of property and that was the piece you were to be located on. Is that right?

A. Yes.

Q. And the man that located you, as I understand, was Patrick Downs. Did he give you a description of the property?

A. I don't remember whether he did or not.

Q. Do you know where you received this sworn statement, the first paper you took to the land office?

A. No, I do not.

Q. Was it brought to you, or did you go to somebody's office to have it prepared?

(Testimony of Pearl I. Nusbaum.)

A. No, sir, I don't remember about that.

Q. Do you know Mr. Kinkaid?

A. I don't know.

Q. Did you ever see him?

A. I don't remember.

Q. Do you know Mr. Pritchard? A. No.

Q. And you don't know Mr. John I. Wells?

A. He was pointed out to me to-day for the first time.

Q. Anyhow, you took that paper to the land office and filed it, the sworn statement? A. Yes.

Q. Then it came time for you to make your final proof at the land office. Do you remember going to the land office and making what is called final proof, and paying about \$400?

A. Yes, I remember that.

Q. And who went with you?

A. I think Mrs. Sensenig.

Q. Anyone else?

A. That's all I can remember.

Q. And who furnished you the money?

A. My husband gave it to me.

Q. Do you remember whether he gave it to you that day? A. I don't know.

Q. What is your best recollection?

A. I can't remember now just when it was given to me.

Q. Did you have a bank account of your own?

A. No.

Q. Do you remember whether he gave you a check or cash? A. No, I do not.

(Testimony of Pearl I. Nusbaum.)

Q. Now think and see if you can't remember what happened the morning you went to the land office, whether or not your husband gave it to you that day, or some time later on, some time before?

A. I think he gave it to me that day, but I can't remember just the time or the circumstance.

Q. It wasn't your habit or custom to have \$400 around was it?

A. No, it certainly was not, but that is nearly seven years ago.

Q. You eventually sold this? A. Yes.

Q. Did you notice to whom the deed was made out when you sold it?

A. I don't remember now.

Q. Do you know who prepared the deed?

A. I do not.

Q. Do you know to whom you sold it?

A. No.

Q. Do you know who negotiated the sale of it?

A. Mr. Nusbaum.

Q. Do you know who he negotiated the sale with?

A. I do not.

Q. Who did you see in the transaction when you sold this property? A. I don't remember now.

Q. Did you sign the deed at your house or at someone's office? A. At an office.

Q. Do you know where the office was?

A. I think it was in the Pierce Building; it seems to me that was where it was.

Q. Do you know how much money you received when you signed that deed?

(Testimony of Pearl I. Nusbaum.)

A. I don't remember exactly; I think something like \$800.

Q. For one claim?

A. I don't remember whether we got that for both or for one.

Q. How much did you get?

A. I have forgotten that part of it too.

Q. Do you know whether you got \$800 or \$400?

A. I had that question put to me before to-day and I can't remember.

Q. What is your best recollection?

A. It seems to me I had the impression that I got \$800 for the one claim.

Q. Did you put it in the bank?

A. No, I turned it over to my husband; I don't know what he did with it.

Q. Your memory is indistinct on that point?

A. Yes.

Q. Did Mr. Nusbaum make an entry at the same time you did, for one of these pieces of land?

A. Yes.

Q. He took up a claim at the same time you did?

A. Yes.

Q. At the time you and your husband entered, what was your husband's occupation?

A. He was at that time salesman for Mr. Dickinson in a market here.

Q. What kind of a market?

A. It was a sort of a grocery store.

Q. Was he a traveling salesman, or was he employed?

(Testimony of Pearl I. Nusbaum.)

A. That was just before he started on the road as a salesman.

Q. And who did he travel for when he did become a salesman?

A. At first he traveled for John L. Day & Company, and later for the Davidson Grocery Company.

Q. Do you know where your husband got the money from that he gave you? A. I do not.

Q. Did he tell you?

A. He may have at the time; I know we had some money when we came out here. We hadn't been out here a great while.

Q. Did he tell you where he got the money from the day he gave it to you? A. No.

Q. Did he tell you he had borrowed it?

A. I don't know.

Q. Did he say anything about it?

A. He may have at the time, but I don't remember whether he did or not.

Mr. GORDON.—We offer in evidence the sworn statement of Pearl I. Nusbaum, dated October 7, 1902; her testimony before the land office, which she identified, together with the cross-examination; the testimony of the other witnesses before the land office; the register's and receiver's certificates, dated February 14, 1903; and the deed of Mrs. Nusbaum, and Jacob V., her husband, to Horace S. Rand, and the patent, all to the southeast quarter of section 22, township 7 north of range 8 east, Boise Meridian; and also the deed by the same parties of the same date, being the same deed, of the south half of the

(Testimony of Pearl I. Nusbaum.)

northeast quarter, and the northwest quarter of the southeast quarter, and the northeast quarter of the southwest quarter of section 24, township 7 north of range 8 east, Boise Meridian.

(Pearl I. Nusbaum papers marked Plaintiff's Exhibit No. 52A and 52N inclusive.)

Cross-examination.

(By Mr. FRASER.)

Q. Mrs. Nusbaum, before you went up to look at this timber claim, had you heard it talked about generally in Boise among your friends that there was timber claims to be located in the Basin by parties entitled to locate them?

A. Yes.

Q. It was general talk around town, wasn't it, about that time? A. Yes.

Q. And there were a great many people going up to locate? A. Yes.

Q. And, I understand, you made up a party of your friends to go up and take up these claims?

A. Yes, sir.

Q. The Eaglesons and yourselves and Mr. and Mrs. Sensenig made up the party? A. Yes, sir.

Q. And in the nature of an outing party, wasn't it? A. Yes.

Q. Were you questioned to-day before in regard to what your evidence would be in this case?

A. I was taken up-stairs and asked some questions.

Q. In regard to this case? A. Yes.

(Testimony of Pearl I. Nusbaum.)

Q. Who asked you these questions?

A. I think a man by the name of Watt.

Q. A Government secret service man?

A. I don't know what his business is.

Q. At the time you filed on this claim, which is October 7, 1902, Mrs. Nusbaum, when you filed this in the land office, this question was asked you; which you answered. I wish to call your attention to it and ask you if it is true and correct: "That I do not apply to purchase the land above described on speculation, but in good faith to appropriate it to my own exclusive use and benefit, and that I have not, directly or indirectly, made any agreement or contract, or in any way or manner, with any person or persons whomsoever, by which the title I may acquire from the Government of the United States may inure in whole or in part to the benefit of any person except myself." That was true, was it not, when you made your entry? A. It was.

Q. You hadn't made any agreement to sell to anybody, had you? A. No, sir.

Q. As a matter of fact, the negotiations for the sale of this claim of yours was made by your husband? A. Yes, sir.

Q. You hadn't talked to anybody about selling?

A. No.

Q. And nobody had approached you about buying? A. No.

Q. All the negotiations leading up to the selling which did take place, was through your husband?

A. Yes.

(Testimony of Pearl I. Nusbaum.)

Q. And at the time of the final proof, you didn't have any contract by which anybody was to have any interest in this claim of yours? A. No.

Q. Now, when you were taken up on the claim and shown which claim was yours, it was one of these timber claims, wasn't it? A. Yes, sir.

Q. You didn't understand, Mrs. Nusbaum, that you had to take that claim that he pointed out, did you? A. No, sir. I didn't understand that.

Q. If there had been no timber on it, you wouldn't have taken it, would you? A. No.

Q. You were satisfied with that particular claim?

A. Yes.

Q. It was as good apparently as any other claim you saw, was it not? A. Yes.

Q. In fact they were all very much alike?

A. Yes, sir, very much.

Q. In fact there wasn't very much choice in any of those claims, so far as you could see?

A. That's right.

Q. And you understood that Mr. Downs was hired to find you a claim?

A. I didn't understand very much about it at that time, but I suppose that's it.

Q. I suppose you thought that his knowledge of the claim was better than your own, on account of his experience? A. Naturally.

Q. In this case, Mrs. Nusbaum, the Government of the United States has, in the bill of complaint, in the case we are now trying, has alleged that at the time you made this first filing in the land office that

(Testimony of Pearl I. Nusbaum.)

you made it having an agreement and understanding that as soon as you got title you should transfer it to the Barber Lumber Company, or some of the other defendants in this complaint. Was there any such agreement? A. There was not.

Q. Is that allegation true or false?

A. It is false.

Q. You never had any agreement at all?

A. No, sir.

Redirect Examination.

(By Mr. GORDON.)

Q. Mrs. Nusbaum, I show you timber and stone sworn statement, dated September 19, 1902, signed Jacob V. Nusbaum, and ask you if that is your husband's signature? A. It is.

Q. I show you the testimony of Jacob V. Nusbaum, dated January 21, 1903, signed Jacob V. Nusbaum, and ask you if that is his signature?

A. Yes.

Q. I show you signature of Jacob V. Nusbaum to the cross-examination thereto, and ask you if that is your husband's signature?

A. Yes, that is his signature.

Mr. GORDON.—We offer in evidence the sworn statement of Jacob V. Nusbaum, dated September 19, 1902; his testimony before the land office, dated January 21, 1903; the cross-examination signed by him; the non-mineral affidavit; and the testimony of the witnesses before the land office; the receiver's and register's receipts; and the patent, all to the south half of the northeast quarter, and the north-

west quarter of the southeast quarter, and the northeast quarter of the southwest quarter of section 24, north of range 8 east, Boise Meridian, the deed having already been offered in evidence.

(Jacob V. Nusbaum papers marked Plaintiff's Exhibit No. 53A to 53L, inclusive.)

Here an adjournment was taken until ten o'clock A. M., Thursday, February 11, 1909.

Court met on Thursday, February 11, 1909, at 10 A. M., pursuant to adjournment, the Examiner and attorneys for the respective parties being present.

Mr. KEIGWIN.—If the Court please, we will ask that an order be entered this morning excluding all the witnesses except the one under examination.

The EXAMINER.—Are these gentlemen here witnesses? Those who are witnesses may retire from the room.

Mr. BUNDY.—I haven't any objection to that order if the Court sees fit to make it, but it is rather unusual in an equity suit. I would like to have the Court issue an order that witnesses subpoenaed here report to the Court and do not report to this room back here be put through a course of examination by secret service agents, not attorneys in the case, and so far as this action is concerned no party to the trial. It is perfectly proper for these gentlemen here to talk to them, but I think it is all wrong for these people to report to these secret service men back here, and I think it is time there was a halt called on it.

Mr. GORDON.—If your Honor please, there is no order that they report to anyone but the Court.

There are no secret service men here. There are two agents from the Department of Justice who have been sent here to assist in getting this testimony, and two special agents from the Interior Department. As I say, we don't know the witnesses; we have never seen them before and a great many of them have declined to be interviewed by anybody, and I can't see the necessity of an order to that effect.

Mr. BUNDY.—I don't see the necessity of excluding witnesses here, but I do say that witnesses subpoenaed to give their evidence to the Court are being brought here and being held for days and submitted to some kind of an examination by people who are not officers of this Court, who are not attorneys of record in this case, who are not taking any part in the trial of this case. What their capacity is I don't know.

The EXAMINER.—Gentlemen, so far as interviewing the witnesses is concerned, I don't think it is proper now at this stage of the case for persons outside of the court, or ever for attorneys, excepting where it is an absolute necessity, to interview witnesses at all. The case is, of course, or should have been, prepared before this trial commenced. I suppose you have all the evidence and know about what these people will swear it, and I think it is not proper to have these witnesses "drummed," as you might say, on either side, either for the plaintiff or defense, at the present time, and I don't imagine that the attorneys for the Government are doing any such thing at all, and I don't think the agents of the

Government are doing it either. Now, I don't assume that they are, and I hope not.

Mr. BUNDY.—If the Court please, they are, and we don't assume that they are. Yesterday, under your Honor's eyes, that special agent was taking witnesses out of the courtroom. As far as I am concerned, I don't know these witnesses and I never spoke to them in my life. Mr. Gordon has been here months and months preparing this case. They know all about it, but the attorneys insist on quitting at four o'clock in the afternoon, with the room full of witnesses, and those witnesses are sent up here to interview people who are not attorneys in the case.

Mr. GORDON.—Do I understand that counsel says that he has not interviewed any of these witnesses?

Mr. BUNDY.—Not a single one. I defy you to show one.

Mr. GORDON.—Weren't you standing on the street talking with Patrick H. Downs when Mr. Keigwin and myself passed you?

Mr. BUNDY.—Of course, I have talked with Pat Downs but I never spoke to him about this case in my life.

The EXAMINER.—There are two parties here, I suppose, assisting the Government attorneys. It is proper for you to instruct them not to interview witnesses.

Mr. GORDON.—I will state to you, sir, that of the 260 witnesses we have had no opportunity to see over fifty or sixty of them to know what they know

or what they will testify to.

The EXAMINER.—I think it is proper for the attorneys on either side to interview their witnesses, but I don't think it is proper to have other persons employed for that purpose.

Mr. GORDON.—They are attorneys, sir; they may not be attorneys of record. They are attorneys here and were sent here for that purpose.

The EXAMINER.—They must avoid so far as possible interviewing witnesses at the present time. I think it is proper for the attorneys for the defense or for the prosecution to interview their witnesses to some extent, and I don't suppose there is an attorney of this court on either side that would do an improper thing, and the agents who are bringing witnesses here and assisting in the preparation of these cases should avoid, so far as possible, interviewing these witnesses.

Mr. BUNDY.—The attorneys are simply keeping out of it, and somebody else—we don't know what their capacity is—has been putting the witnesses through an examination.

Mr. KEIGWIN.—Will you explain what the impropriety is in taking these witnesses into a room and having the door locked? Is there an improper act done there. This whole proposition amounts to an innuendo that there is something improper in behalf of the Government in this case. If that is the situation, and it is the intention to make the charge, I want the charge made bluntly and boldly; I want testimony taken right here in that matter. I want to state the position of counsel for the complainant

in this case. So far as my experience goes, I don't know of any case where any man has placed a witness on the stand without first interviewing him and finding out what he is going to say. It is always regarded as a very dangerous thing, and sometimes a very foolish thing, to put witnesses on the stand without interviewing them. We have here two gentlemen who are not secret service men, who are not detectives, who are reputable—one of them at least is a member of the bar—the others are not lawyers; they are sent here for the purpose of assisting.

Mr. FRASER.—I shall make it my business that I shall tell every witness I see. Yesterday one of these special agents came down and walked into that courtroom and took Mrs. Nusbaum out. She didn't want to go, but said she had to go up-stairs. She went up there with him, and when she came back she said, "He didn't get anything out of me." The attorneys can ask—these fellows are not attorneys. If these fellows are attorneys why don't you enter them as attorneys on record?

Mr. KEIGWIN.—We don't regard it as necessary to do anything of the kind. We are going to have these witnesses examined until the Court orders that we cannot do so.

The EXAMINER.—The attorneys on both sides understand my position in this matter, and I know that we have to know before we come into court what the witnesses will testify to. It is perfectly proper for attorneys who are reputable attorneys—and I assume that every man here is a reputable attorney—it is proper for them to see the witnesses—

not to take them off into private room, but to talk to them and ascertain what they will testify to. I assume, as I stated before, that the attorneys on either side of this case will do nothing that is improper for an attorney to do, and, as I have stated, I think it is proper for attorneys to interview their witnesses and ascertain what they will testify to before they put them on.

Mr. BUNDY.—The Court evidently has entirely failed to appreciate what the suggestion was that I made. I haven't made any such suggestion. Mr. Gordon and Mr. Kiegwin are the attorneys here, and I haven't any objection to their examining their witnesses and finding out what they are going to testify to. What I am asking this Court for now, and I am asking it on this record, is that the Court issue an order to the witnesses who are subpoenaed here to be examined in court that they are not required and have no right to be taken off into a back room to be subjected to an examination out of court by some one whose title we do not know. The purpose is to try and keep this thing straight.

Mr. KEIGWIN.—What do you mean by straight?

Mr. BUNDY.—Not crooked, wrong.

The EXAMINER.—We certainly have had enough of this, and the attorneys must appreciate the position that is occupied by all the parties, and the question or two that I asked the witness yesterday indicated what I thought with reference to this matter. I asked a witness if he had been interviewed since he came to the court, and if anyone had said anything with reference to what he would

testify to here, and he replied that he had not, and that is an indication of what I thought in the matter, and, as before stated, I think it is proper for reputable attorneys to examine their witnesses on either side to ascertain to some extent what they will testify to.

Mr. FRASER.—I don't think there is a witness called here that can testify that either Mr. Bundy or myself has ever asked them a word.

Mr. GORDON.—Didn't you talk to Mr. Charles Balantine during the cross-examination in the courtroom the day he was here as a Government witness?

Mr. FRASER.—I did not. Mr. Balantine called me into a seat and I sat down there. It wasn't at my solicitation that I had any conversation with Mr. Balantine. He hollered to me and said: "You have got me mixed up and I don't remember about these things," but I said, "That's up to you."

Mr. BUNDY.—I am asking for an order, and if the Examiner feels that he ought not to make the order and has no authority to make the order, I desire to go before Judge Dietrich, because I think it is a malicious abuse to subpoena men here and keep them here for a week—

The EXAMINER.—(Interrupting.) I don't understand that you are objecting to the attorneys for the prosecution.

Mr. BUNDY.—Not at all.

The EXAMINER.—If there is anything going on that is improper, I shall certainly see that it is stopped. It will take more time, of course, for there

are only two attorneys her representing the Government. It will take more time to try this case than it otherwise would if we do not permit anybody outside to examine witnesses, but we would better take the time. We want to conduct the trial in a proper manner. I would like to conduct it precisely as I would if I were the judge of this court, and, of course, it would be a little different then, because I would have authority to do more than I do. However, I think we will get along very nicely. You may proceed with the examination.

[Testimony of J. A. Youngkin, on Behalf of the Complainant.]

J. A. YOUNGKIN, produced as a witness on behalf of the complainant, being first duly sworn, testified as follows:

Direct Examination.

(By Mr. GORDON.)

Q. You are Mr. John A. Youngkin?

A. Yes, sir.

Q. Where do you reside, Mr. Youngkin?

A. Well, my wife resides here in Boise. I reside over here at Richfield; I do business there.

Q. What is your occupation?

A. I am blacksmithing at present, and running a freight team.

Q. What was your occupation in August, 1902?

A. Freighting.

Q. Where did you reside at that time?

A. Here in Boise, 1920 North Ninth.

Q. I will ask you, Mr. Youngkin, if you took up

(Testimony of J. A. Youngkin.)

a claim under the Timber and Stone Act?

A. I did.

Q. I show you timber and stone sworn statement, dated August 29, 1902, and ask you if that is your signature? A. Yes, sir.

Q. I show you signature to non-mineral affidavit, dated August 29, 1902, and ask you if that is your signature? A. Yes, sir.

Q. I show you testimony given before the land office, dated December 3, 1902, and ask you if that is your signature to that? A. Yes sir.

Q. I show you the cross-examination attached and ask you if you signed that? A. Yes, sir.

Q. I show you deed, dated February 12, 1903, and made by John A. Youngkin and Susie A., and ask you if you signed that deed.

A. Yes, sir.

Q. Mr. Youngkin, who first spoke with you about taking up one of these claims?

A. W. H. Gibbard.

Q. What did he say about it?

A. Well, I was out with the teams and come in and he said he was going to the mountains. Him and I was living together in the same house. And I said, "What are you going up there for, Will"? and he said, "I am going to take up a timber claim," and he said, "You had better go along."

Mr. FRASER.—Did I understand that the Court made an order that witnesses should not be in this room?

The EXAMINER.—I made the statement that

(Testimony of J. A. Youngkin.)

they should not be interviewed by anybody excepting the attorneys in the case.

Mr. FRASER.—We have no statute in this state, and there is none that I know of, that will keep witnesses out of the room except in criminal cases.

Mr. BUNDY.—The question was, whether you had made an order keeping witnesses out of this room.

The EXAMINER.—I directed that they go out of the room at the request of some one of the attorneys. Now, if the attorneys desire it, we will have them in a separate room so that these parties cannot see them at all.

Mr. FRASER.—I don't know that it makes much difference, but I know of no authority that provided that witnesses can be kept out of the courtroom in an equity suit.

The EXAMINER.—I think I will say to the attorneys that it is not an uncommon thing, not an unprecedented thing, that witnesses in civil cases are required to be absent from the room during the examination of others.

Mr. FRASER.—If you will provide some place for these witnesses and see that they are not interviewed by these agents—

Mr. GORDON.—(Interrupting.) Is the purpose of this request for an order that we be not allowed to have gentlemen sent here to assist us, to ask witnesses what they know about this? Witnesses are not compelled to answer questions; they are not compelled to go to any room, and nobody has suggested that they are compelled to go. If there is any impro-

(Testimony of J. A. Youngkin.)

priety in that I fail to see it.

Mr. FRASER.—The impropriety is this: Witnesses come here under subpoena, and, if they knew that they didn't have to go to that room, we would have no objection. But they come here and a fellow walks up and says "Come with me." They don't know their rights in this matter. If the witnesses are informed that they don't have to go unless they desire to, we have no objection.

The EXAMINER.—I have already stated that it is proper for the attorneys to interview witnesses, but not proper for anybody outside of the regular attorneys who appear in this case.

Mr. BUNDY.—We haven't the slightest objection to that.

The EXAMINER.—For that reason I should say it is not proper for the outside agents to interview them, I suppose they have seen all of these people before the trial commenced.

Mr. GORDON.—No, sir. That is rather violent presumption. Some time in December I received a telegram from the Attorney General to the effect that I was expected to assist in these cases. Until the latter part of January, I had not the opportunity to even read the bill. I had had something to do with the matter or transactions upon which the civil suit is based, by reason of the fact that I conducted the Grand Jury proceedings upon which an indictment was based and found upon the same transactions. There were fifty or sixty witnesses before that Grand Jury. I never saw a statement of those witnesses

(Testimony of J. A. Youngkin.)

other than those before the Grand Jury, and I never talked to one of those witnesses except in the Grand Jury. We have from 200 to 250 witnesses, spread all over this country; we have not had an opportunity to see them for the simple reason that we could not delay this proceeding, as there was an order of the Court that we should conclude taking our testimony by a certain fixed date. We have not had an opportunity to see these witnesses, but it seems to me that it would be an impropriety in any court to tell witnesses that they weren't allowed to talk to either an attorney of record or an attorney sent here to assist.

The EXAMINER.—I have stated my position, gentlemen. I have no reason to change it at all. If the attorneys of record have not had time to interview these witnesses, or prepare the case for trial, they can take the time as we go along. I can't see any other way. If they can employ two men as outside agents, the defense can do the same, and you can see what this would lead to.

Mr. GORDON.—If I understand the Court correctly, these gentlemen sent here to assist us are not to be permitted to ask the witnesses what they know.

Mr. FRASER.—We don't care whether they were sent here to assist you. What we object to is these witnesses being taken in there without knowing that they don't have to go there and answer questions.

Mr. BUNDY.—I suppose when they drew this bill of complaint somebody drew it up; I suppose the Government didn't go in and charge all the people of

(Testimony of J. A. Youngkin.)

Boise with conspiracy without knowing what they were doing.

The EXAMINER.—I think they are permitted to take such time as they need to interview their witnesses. If they need more time let them take it. I don't know what these gentlemen on the outside are doing. They may be doing nothing except what is perfectly proper. I don't assume that they are doing anything improper.

Mr. KEIGWIN.—I am trying to get a suggestion on the record as to whether or not there is anything improper.

Mr. FRASER.—Have you any objection to an order being made and announced to the witnesses that they are not compelled to go before these men and state what they know?

Mr. KEIGWIN.—We object to any order at all.

Mr. FRASER.—Isn't it a just order?

The EXAMINER.—Gentlemen, I have stated my position in this matter. I made the order for these witnesses to retire from the room, except the one that is being examined. If there is any reason why any further order should be made, I will make it, as far as I am concerned, but I hope there will be no reason, and I don't think there will be any reason.

Mr. KEIGWIN.—My question is, does the Examiner make any order that these witnesses are not to be examined by representatives of the Government?

The EXAMINER.—I didn't make any such order. I made an order that they were to be examined by attorneys of record and not by outside persons.

(Testimony of J. A. Youngkin.)

Mr. KEIGWIN.—Did I understand the Court to make the order that these gentlemen here assisting counsel of record are not to be allowed to—

The EXAMINER.—(Interrupting.) That is what I said.

Mr. KEIGWIN.—We will ask to have order certified to the Court.

The EXAMINER.—Very well.

Mr. KEIGWIN.—Then do I understand that we are to instruct Mr. Wade and the other special agents that they are not to interview these people?

The EXAMINER.—My order was that they were not to be interviewed by people outside. That is the ruling of the Court.

Mr. KEIGWIN.—And that will be certified to the Court?

The EXAMINER.—Yes, sir.

Mr. KEIGWIN.—The complainant notes an exception to this ruling.

The EXAMINER.—My ruling is not, that they shan't be permitted to interview them in the courtroom, but outside of this court.

Mr. GORDON.—Do you mean in this room?

The EXAMINER.—In this room. The difficulty is that our rooms are too small, and it is liable to interfere with the business, but I think it is better that the attorneys of record should interview the witnesses only.

Mr. KEIGWIN.—And your Honor will allow it to be noted upon the record in this case that the attorneys of record in this case are engaged in taking tes-

(Testimony of J. A. Youngkin.)

timony from ten in the morning to five in the afternoon, and it is a physical impossibility for them to interview a fifth part of their witnesses.

Mr. BUNDY.—Let that appear as counsel's statement. They haven't been here till five o'clock yet.

Q. (By Mr. GORDON, Continuing.) Mr. Youngkin, you were telling how you got interested in this matter when you were interrupted. Now proceed, will you? You said somebody said they were going up there.

A. Frank Gibbard said he was going up at that time when I came in and he wanted me to go along. So we went down here—I think Tommy Stanford run that barn; it was the old Camas barn—and we hired a team. Elof Anderson and his wife went along.

Q. Did he tell you how much it was going to cost you? A. No, sir.

Q. Did you go along with him?

A. Yes, sir.

Q. Who else went?

A. Mr. Gibbard and Elof Anderson and his wife.

Q. Your wife?

A. No, Elof Anderson's wife.

Q. And was he on his way up there when he spoke to you, or how long afterwards was it?

A. I believe the next day was when he spoke to me about it, and of course we were both living there together, and he said, "I am going to the mountains to take up a timber and stone claim," and he said, "You had better go along," and I says, "All right,

(Testimony of J. A. Youngkin.)

I'll go." I was teaming through that country at that time.

Q. Did he tell you who would locate you?

A. He said there was a locator there.

Q. Did he give you his name?

A. I don't recollect at the time, but when we got up there—we hired a team and went up and when we got there Pat Downs was there.

Q. And did you know how much this land was going to cost you before you started up there?

A. Well, I had an idea, yes, sir.

Q. Who gave you that idea?

A. Well, Mr. Gibbard and I was talking it over.

Q. And did you have a talk with Mr. Downs about it when you got there?

A. Yes; that is, he located us. Yes, sir.

Q. Did you pay him there, or did you pay afterwards? A. No, Mr. Gibbard paid him.

Q. Was that the understanding, that Mr. Gibbard was to pay him?

A. When I come down I paid for the team. Mr. Gibbard and I of course have done business together more or less for the last eighteen years, and Will says, "We will have to pay Pat Downs," and he says, "I will pay him."

Q. Did you know how much that was?

A. According to what Mr. Gibbard told me—

Q. (Interrupting.) Did you pay Mr. Gibbard back, and if so how much? A. Yes, \$25.

Q. Did Mr. Downs show you any number of pieces of land to locate on, or did he show you just

(Testimony of J. A. Youngkin.)

one particular piece?

A. We was over, I should judge, about three or four sections.

Q. And were you shown these sections; did you walk through them? How many sections did he show you personally?

A. I don't know just how many. We was over three or four sections, I know. We went over there and then he showed me a piece there and he said "You had better take that, Mr. Youngkin," and so I filed on it.

Q. Then you took that piece? A. Yes, sir.

Q. And did he give you a description of it?

A. Yes, sir.

Mr. KEIGWIN.—If the Court please, counsel for the Government desire to note the presence of Mr. John I. Wells in the room, and state that they object to Mr. Wells being present during the taking of this testimony.

The EXAMINER.—He is a witness?

Mr. KEIGWIN.—We object to the presence of Mr. Wells in the room during the taking of the testimony, and ask that he be requested to leave.

The EXAMINER.—I can't assume that his being here is improper.

Mr. BUNDY.—I want to say that we haven't subpoenaed any witnesses on our part, and I understand that Mr. Wells has not been subpoenaed by them.

Mr. KEIGWIN.—We don't put it on the ground that he is a witness. Of course, you understand that if he is allowed to remain in the room he will be dis-

(Testimony of J. A. Youngkin.)

qualified as witness for you.

The EXAMINER.—If the defense is going to use Mr. Wells, he will have to be excluded from the room, as well as the rest of them. This order applies to both sides. Those who are to be used as witnesses must be excluded from the room until further orders. If there is any reason for changing this order I will change it.

Mr. BUNDY.—I will say that at the present time we have no intention of using Mr. Wells as a witness.

The EXAMINER.—It wasn't my desire, but it was done on the request of the attorneys.

Mr. KEIGWIN.—Then we may understand that our objection is overruled.

The EXAMINER.—If this person here is one of the parties to the suit he has a right to be here, I think.

Mr. KEIGWIN.—We understand that Mr. Wells is named as party defendant in this cause, but we also understand that he has no present interest in the matter and that he has made no answer to the bill, and it is also possible that it may be necessary on behalf of the Government, to call Mr. Wells as an adverse party in interest and cross-examine him, and upon these grounds, and also upon the ground of the manifest impropriety and in regard to the nature of the case, we renew our objection to the presence of Mr. Wells at the taking of this testimony, and understand that the Court has overruled our objection.

The EXAMINER.—If Mr. Wells is a party to this

(Testimony of J. A. Youngkin.)

suit, the statement of the Court is that he has a right to be here, and if he is offered as a witness that matter will come up then. I see no reason now, at present, why he shouldn't be used as a witness, even if he is a party in the civil suit.

Mr. KEIGWIN.—We note an exception and ask that the matter be certified to the Court.

Q. (By Mr. GORDON, Continuing.) Mr. Youngkin, did Mr. Downs give you a description of this property when you were up there?

A. Yes, sir.

Q. And what did you do with that?

A. The description? Why, I come down and located, filed on it.

Q. Did you prepare the papers yourself, or who prepared them for you?

A. I think the receiver of the land office prepared them.

Q. The receiver of the land office made out this typewritten sworn statement for you?

A. I think the receiver at the land office, but I wouldn't be certain; it has been so long ago.

Q. Did you know Mr. Harry S. Worthman?

A. Yes, sir.

Q. Did you go to his office before you went to the land office, after you returned from viewing the land?

A. I believe we did.

Q. Did he prepare that sworn statement for you?

A. Well, now, I don't recollect whether he did or not.

Q. What is your best recollection on that matter?

(Testimony of J. A. Youngkin.)

A. We was in there and he prepared some paper and I don't just recollect what it was.

Q. Who was with you there at that time in Mr. Worthman's office?

A. Let's see. I believe Gibberd was there.

Q. Did you pay Mr. Worthman a fee?

A. No, sir.

Q. Did you ever pay Mr. Worthman a fee in this matter? A. Not to my recollection.

Q. Now, how did you come to go to Mr. Worthman's office?

A. Well, he was doing some business for me and was a friend of mine.

Q. He was your attorney, was he?

A. Yes, sir.

Q. Did you suggest Mr. Gibberd going there, or did he suggest your going there?

A. Well, I don't know. I don't recollect. We was here at that time and would always go up there.

Q. Do you remember who your witnesses were before the land office?

A. Not positively; I think Mr. Gibberd was one of them.

Q. Mr. Wells?

A. Mr. Gibberd was one and Mr. Anderson, if I ain't mistaken.

Q. Did you know Mr. John I. Wells at that time?

A. I did not, only just by sight.

Q. Did you know him to speak to?

A. Yes, probably spoke to him on the street, but never had any conversation.

(Testimony of J. A. Youngkin.)

Q. Had you seen him in this matter when you filed your first paper? A. No, sir.

Q. After you made your original filing in the land office you waited sixty or ninety days, and then you made your final proof? A. Yes, sir.

Q. And did you make proof with your own money?

A. I had part of my own money, and part I borrowed.

Q. How much did you borrow?

A. I think in the neighborhood of \$300.

Q. And from whom did you borrow that?

A. I got it from W. H. Gibberd.

Q. Do you know where Mr. Gibberd got that money?

A. I couldn't say; he got it out of the bank he told me.

Q. Do you know what bank he received it from?

A. Capital State.

Q. Did you give him a note for it?

A. No, sir.

Q. Pay him any interest on it? A. No, sir.

Q. When were you to repay this money to Mr. Gibberd? A. Any time it was convenient.

Q. When did you pay him?

A. I should judge it was possibly four or five or six months, something like that.

Q. And was that in check or cash?

A. I paid him?

Q. I mean that he paid you?

A. Well, now, that money I got of him?

(Testimony of J. A. Youngkin.)

Q. Yes. A. I think it was money I got.

Q. Did you go to the bank with him?

A. He was at the bank, and we was at the bank, and we proved up at the same time.

Q. Whatever you got, you went directly from the bank to the land office?

A. To the best of my recollection, yes, sir.

Q. And you there made your proof?

A. Yes, sir.

Q. Did you have any idea or any information when you located and proved up on this land as to the value of the land?

A. Well, of course I had an idea of my own.

Q. What did you think it was worth?

A. Well, I supposed it was worth in the neighborhood of probably \$700 or \$800 or \$1000.

Q. Now, then, you had something over \$100 of your own money with which you proved up?

A. Yes, sir.

Q. I understand these claims cost between \$400 and \$415 at the land office. Is that your recollection of it? A. Something over four hundred.

Q. Where did you get that money that you didn't get from Mr. Gibberd?

A. I was freighting through the hills, and got it from different parties.

Q. It was money you had earned yourself?

A. Yes, sir.

Q. Do you know how long you had that, or do you?

A. I don't know whether I had had it very long;

(Testimony of J. A. Youngkin.)

someone may have paid me a few days before.

Q. You subsequently sold this property. Had anyone made you an offer to purchase it between the time you made your original entry, or before that, and the time, up to the time you did sell it?

A. No, sir.

Q. Who was the first person that spoke with you with the view of buying this property?

A. Well, I don't know. I don't recollect who was really the first one.

Q. Have you in mind anybody that spoke to you?

A. Only W. H. Gibberd, when I came in said there was a chance that we could sell the land if we wanted to for so much money.

Q. Did he tell you to whom you could sell it?

A. At the present time I don't know as he did.

Q. Tell all that you can remember relating to the sale of this property.

A. Well, I don't just recollect now all about it.

Q. Did you go to see anybody about selling it?

A. No, I did not, because I was on the road a good deal, and Mr. Gibberd and I had done business together, and he tended to that for me.

Q. Did he tell you anybody offered him a certain amount for it?

A. He said we could get \$800 for it.

Q. Did he tell you who you could get that \$800 from?

A. No, I don't recollect that he did.

Q. Did you go to anybody's office to sell it after Mr. Gibberd spoke to you?

(Testimony of J. A. Youngkin.)

A. No, he said we could go down, and if we wanted to make out papers for it we could get our money for it.

Q. Did he tell you where you should go?

A. I think when I sold mine I went to Harry Worthman's office, in the Falk Building.

Q. And what did Mr. Worthman say to you about this?

A. He said he was going to make out papers for it—we would get \$800 for it.

Q. Did he have the paper made out when you got there?

A. That I couldn't say.

Q. Did he give you the money for it there, or what happened?

A. He give me a check.

Q. Whose check was it?

A. That I couldn't say.

Q. Did he offer you \$800 then, or did he offer you \$750, and then raise it to \$800?

A. No, he didn't make no offer. The first offer he made to me was \$800.

Q. Did he have the check there with him at that time, or did he go out and get the check and return?

A. I don't recollect whether he did or not.

Q. Did you know the name of the grantee, or the person to whom this property was conveyed in this deed?

A. I don't recollect.

Q. Do you know whether you knew at that time?

A. Well, that I couldn't say.

Q. Do you know Mr. Horace S. Rand?

A. No, sir.

Q. Ever hear of such a man?

(Testimony of J. A. Youngkin.)

A. Not to my recollection. I might have heard of him.

Q. When this deed was made out, was Horace S. Rand's name in it?

A. That I couldn't say.

Q. Was it there when you signed it?

A. I couldn't say.

Q. Do you know whether you signed the deed in blank, or whether you signed the deed as it is now? I mean, were the names and dates in the deed when you signed it?

A. I don't recollect whether it was all there or not; that I couldn't say.

Q. You read it over, didn't you?

A. I wouldn't be positive—I generally do—it is my custom to do that.

Q. And Mr. Worthman gave you a check, as I understand, for \$800?

A. Yes, sir, if I recollect right.

Q. Is that your best recollection?

A. Yes, sir.

Q. Do you remember what you did with that check? A. I got it cashed, I suppose.

Q. I mean, did you deposit it in your bank, or did you take it to the bank on which it was drawn and have it cashed?

A. I took it to the First National Bank and had it cashed.

Q. That was the bank on which it was drawn, was it? A. Yes, sir.

Q. Was your wife with you when you signed that

(Testimony of J. A. Youngkin.)

deed?

A. She was up there at the office at that time, yes, sir.

Q. Did you know Mr. John Kinkaid?

A. Yes, sir.

Q. Did you ever talk to him about this property?

A. No, sir.

Q. Did he ever talk to you about it?

A. No, not to my recollection.

Q. He never asked you if you had it for sale?

A. No, sir.

Q. And Mr. Louis M. Pritchard?

A. I don't know as I know him.

Q. And you never met Mr. John I. Wells in this transaction from the beginning to the end?

A. No, sir.

Mr. GORDON.—We offer in evidence timber and stone land sworn statement, signed John A. Youngkin, dated August 29, 1902; notice of publication from the land office; the non-mineral affidavit, dated August 29, 1902, signed John A. Youngkin; Mr. Youngkin's testimony before the land office, dated December 3, 1902; the cross-examination attached thereto, signed by Mr. Youngkin; and the testimony of the witnesses on final proof; the certificates of the register and receiver of the land office, dated December 3, 1902; and the deed, signed and executed by John A. Youngkin, and wife, Susie A., to Horace S. Rand, dated February 12, 1903, and the patent, all to the northeast quarter of section 12, township 7 north of range 7 east, Boise Meridian.

(Testimony of J. A. Youngkin.)

(John A. Youngkin papers marked Plaintiff's Exhibit No. 54A to 54X, inclusive.)

Q. I understood you to say that your wife didn't take up a timber claim?

A. She took up a claim.

Q. You and your wife made separate deeds for your claims? Her's isn't embodied in this one?

A. No, sir.

Cross-examination.

(By Mr. BUNDY.)

Q. Mr. Youngkin, you testified that Mr. Downs, at the time you went up to the land, showed you over several sections? A. Yes, sir.

Q. And the one that you finally located upon was the one that he showed you the corners to, and which you decided to take? A. Yes, sir.

Q. Did Mr. Downs tell you that you had to take that particular claim, or did you simply depend upon his better judgment in that matter and let him select it for you?

A. No, sir, he told me—he showed me different pieces there that I could have my choice.

Q. So Mr. Downs was selecting for you by simply recommending, and you adopted his suggestions. Is that right? A. Yes, sir.

Q. At the time you went to the land office and filed your first paper, which we call the application to purchase, you had had no talk with anybody about selling it when you got it? A. No, sir.

Q. And that is true at the time you made your final proof? A. Yes, sir.

(Testimony of J. A. Youngkin.)

Q. In your first application which you filed in the land office, Mr. Youngkin, among other things, you testified that you had then made no agreement with any person, firm or corporation by which they were to acquire any interest in the lands you were applying to purchase, or that the entry was for the benefit of any person other than yourself. That was exactly true at that time, wasn't it?

A. Yes, sir.

Q. And the same thing is true of when you made your final proof? A. Yes, sir.

Q. It is charged in the bill of complaint in this lawsuit that you and others entered into a conspiracy with the Barber Lumber Company and a lot of other fellows to defraud the United States out of the piece of land you entered. Is that true or false? A. I don't see it that way.

Q. It is not true, then? A. No, sir.

Q. And it is alleged in this complaint that you entered this land under an agreement by which you agreed that as soon as you got title you would turn it over to the defendants, or to some person that they should direct. Is that allegation true or false?

A. I didn't know of any agreement.

Q. I would like to have you give a definite answer. Is that allegation, as I have stated it, true or false? A. It is false.

Q. You said that Mr. Gibberd arranged for the sale of this land, I think, with his and others, did you not? A. Yes, sir.

Q. And your recollection is not very clear about

(Testimony of J. A. Youngkin.)

the transaction?

A. No, sir, because at that time Mr. Gibberd and I was living together, and we was all in one house, and if I was out and anything happened he tended to it, and anything of his the same way, I tended to his.

Mr. KEIGWIN.—Where were you and Mr. Gibberd living at that time?

A. 1920 North Ninth.

Q. In this city? A. Yes, sir.

(Witness excused.)

[Testimony of Caroline Alexander, on Behalf of the Complainant.]

CAROLINE ALEXANDER, produced as a witness on behalf of the complainant, being first duly sworn, testified as follows:

Direct Examination.

(By Mr. KEIGWIN.)

Q. Mrs. Alexander, where do you live?

A. In Boise.

Q. How long have you lived in Boise?

A. Eleven years.

Q. Your daughter is Mrs. Harry Eagleson, is she not? A. Yes, sir.

Q. Do you live with Mr. and Mrs. Eagleson?

A. Yes, sir.

Q. Were you living with them in 1902?

A. Yes, sir.

Q. In 1902 you made an entry of some land in this state under the Timber and Stone Act, did you

(Testimony of Caroline Alexander.)

not? A. I did.

Q. I show you now timber and stone land sworn statement, dated October 7, 1902, and purporting to be signed by you. Is that your signature to that statement?

A. Yes, sir, that is my signature.

Q. And after having made that statement you went to the land office and offered proof in support of that entry, did you not?

A. Yes, sir.

Q. You remember that you made proof upon that entry? A. Yes.

Q. I show you now the testimony of claimant in timber and stone land entry, purporting to be your testimony, and to have been signed and sworn to by you on the 12th of February, 1903, and ask you if that is your signature?

A. That is my signature, yes, sir.

Q. And I show you also the paper headed the cross-examination of claimant, in connection with direct examination, purporting to be signed by you, and ask you if that is your signature?

A. Yes.

Q. I show you a deed dated 16th of February, 1903, between Caroline Alexander, a widow, party of the first part, and Horace S. Rand, grantee, and ask you if that is your signature? A. Yes.

Mr. KEIGWIN.—We offer in evidence the timber and stone land sworn statement of Mrs. Alexander, and the notice for publication attached thereto, and the testimony of the claimant, cross-examination

(Testimony of Caroline Alexander.)

of claimant on final proof, the receiver's receipt and the register's certificate, both dated February 12, 1903, the patent (the patent doesn't seem to be here. I think Mr. Gordon has been offering the patents with the understanding that they are to be supplied), and the deed, dated February 16, 1903, from Caroline Alexander, a widow, to Horace S. Rand, and executed and attested by L. M. Pritchard, notary public, to the east half of the northeast quarter, and the north half of the southeast quarter of section 34, township 7 north of range 8 east, Boise Meridian.

(Caroline Alexander papers marked Plaintiff's Exhibit No. 55A to 55H, inclusive.)

Mr. KEIGWIN.—Q. Mrs. Alexander, how did you come to make this entry?

A. Mr. Eagleson suggested it.

Q. Your son in law? A. Yes.

Q. Who went with you?

A. Yes, Mr. and Mrs. Sensenig, Mr. and Mrs. Eagleson, Mrs. and Mr. Nusbaum, Mr. and Mrs. Clyde Eagleson, and Mr. and Mrs. Harry Eagleson, and Charlie Eagleson was along.

Q. And you went up to the neighborhood of this land which you afterwards entered?

A. We stayed the first night at Idaho City, and the next day we went on to Kempner's ranch.

Q. Whom did you find up there? Anybody besides your own party?

A. Not at the time; there were others going and coming.

(Testimony of Caroline Alexander.)

Q. Did you find anybody there that pointed out to you land that was subject to entry?

A. Mr. Downs.

Q. Was Mr. Downs up there?

A. He was there at the time.

Q. Did he show you the land you were to take?

A. Yes, sir.

Q. And you paid him \$25?

A. I didn't. My son in law transacted my business for me.

Q. Was Mr. Wells up there? A. No, sir.

Q. You don't know Mr. John I. Wells?

A. I didn't until day before yesterday, until he was pointed out to me in the courtroom.

Q. You had no dealings with John I. Wells in connection with this timber entry?

A. No, sir.

Q. Then you came back to Boise and went to the land office? A. Yes, sir.

Q. And made this application which has been put in evidence here? A. Yes, sir.

Q. Do you remember that you afterwards came to make final proof?

A. I don't remember of going to the land office but once. The next time my signature was signed it was brought to the house.

Q. Mrs. Alexander, I think you are mistaken about that, and if you will refresh your memory you will remember that you went to the land office a second time, something like three months after your first entry.

(Testimony of Caroline Alexander.)

A. It may be; I don't remember.

Q. Do you remember where you got the money to pay for this land?

A. Yes, my son in law got it for me.

Q. Mr. Eagleson? A. Yes, sir.

Q. Did he give you the money, or did he pay it for you?

A. He transacted the business for me.

Q. You don't know where he got the money?

A. I never asked him.

Q. He was in business here?

A. He was in business, and I had money of my own at the time, but it was loaned out.

Q. When you came to sell this land, with whom did you deal, or did you deal at all?

A. I didn't deal at all; Mr. Eagleson transacted the business for me.

Q. Did you go to Mr. Pritchard's office, or did he come to your house?

A. He came to my house.

Q. Do you know Mr. Pritchard?

A. No, I don't know him. I don't remember that he came; only that some gentleman came out with my son in law when I sold it.

Q. You signed the deed and he took your acknowledgment? A. Yes, sir.

Q. You are a widow?

A. I am a widow, yes, sir.

Q. Do you know Horace S. Rand? A. No.

Q. Did you ever know him?

A. I never knew him.

(Testimony of Caroline Alexander.)

Cross-examination.

(By Mr. BUNDY.)

Q. Mrs. Alexander, what was your son in law, Harry Eagleson's business at that time?

A. He was in the ice business.

Q. What was Clyde Eagleson's business at that time?

A. He was in the Capital Stand Bank.

Q. And you were a widow at that time?

A. Yes, sir.

Q. What is your present age?

A. My age is now sixty-four.

Q. You at that time, I think you said, had means of your own, and that it was loaned out?

A. Yes.

Q. Did you understand, from your son in law or others, that you had a right to enter this land, and after you proved up and got final receipt that you had a right to sell it?

A. Not at that time.

Q. At the time you made the entry did you have any arrangement for selling it?

A. Not at all.

Q. You intended at that time to hold it until you got ready to sell it?

A. Yes.

Q. At the time you filed this first paper in the land office had you any arrangement or agreement of any kind, in writing or otherwise, express or implied, by which you had obligated yourself to transfer that property when you got it to anybody?

A. No, sir.

Q. Had you any such agreement when you made final proof?

A. No, sir.

(Testimony of Caroline Alexander.)

Q. It is charged in this complaint in this lawsuit we are trying, Mrs. Alexander, that you entered this land under an agreement by which you had promised to turn it over to the defendants or some one they should direct as soon as you got title to it.

A. I had no such understanding at all.

Q. It was never suggested to you by anybody?

A. Never was suggested to me by anybody.

Q. Was it your intention to exercise your right as a citizen in a legal and lawful way and for your own benefit entirely?

A. Yes, sir.

Q. And that is what you did, is it not?

A. Yes, sir.

(Witness excused.)

[Testimony of George Bayhouse, on Behalf of the Complainant.]

GEORGE BAYHOUSE, produced as a witness on behalf of the complainant, being first duly sworn, testified as follows:

Direct Examination.

(By Mr. GORDON.)

The EXAMINER.—I suppose, gentlemen, there is no objection to one of these gentlemen staying at the door here to call witnesses for the attorneys.

Mr. FRASER.—We have no objection at all. That's what they are for.

Mr. GORDON.—Q. You are Mr. George Bayhouse, are you? A. Yes, sir.

Q. You made a timber and stone entry in 1902, did you? A. Yes, sir.

(Testimony of George Bayhouse.)

Q. You made a timber and stone entry in 1902, did you? A. Yes, sir.

Q. Mr. Bayhouse, I show you timber and stone sworn statement, dated September 24, 1902, and ask you if that is your signature to it? A. Yes, sir.

Q. I show you testimony of George Bayhouse, taken before the land office, dated March 13, 1903, and ask you if that is your signature to that?

A. Yes, sir.

Q. I show you cross-examination attached, and ask you if that is your signature? A. Yes, sir.

Q. I show you deed, signed George Bayhouse, executed March 24, 1903, running to Horace S. Rand, and ask you if you signed and acknowledged that deed? A. Yes, sir.

Q. That is your signature to it?

A. Yes, sir.

Q. Who first spoke with you about taking up one of these claims, Mr. Bayhouse?

A. I guess it was a year previous, or two years previous, I don't know which, there was a man that worked in the hardware store, and one of the clerks there, Charlie Peterson, mentioned about taking up a claim, and I asked him if there was any chance—I would like to find out for myself. After that time I listened around, and whenever I heard of any opportunity to take up a claim I went up.

Q. Who did you listen to, do you remember?

A. No, I don't know. I heard it all over, but I couldn't tell you. I was watching the entries at that time, and as soon as I got a chance to go I went.

(Testimony of George Bayhouse.)

Q. Did Mr. Peterson tell you how much he had made out of his claim? A. No, sir, he did not.

Q. Didn't say anything about it?

A. No, sir.

Q. Did Mr. Peterson tell you anything about Mr. John I. Wells, or tell you to go and see him?

A. No, sir.

Q. Did you know Mr. Wells? A. Yes, sir.

Q. And who made up the party that you went with to view this land?

A. There was myself and brother Frank, and my sister, Mrs. Bilderback, and my sister in law, Mrs. Delilah Bayhouse.

Q. Did Mr. George Bayhouse go with you?

A. That's myself.

Q. And who arranged for the team?

A. I did.

Q. Who located you? A. Mr. Downs.

Q. Did Mr. Downs give you a description of that land?

A. He didn't give me a description of it; he showed me the corners and read them at the time we were there. He didn't give me a description to take away with me.

Q. Where did you get the description?

A. Here in Boise.

Q. Who from? A. Mr. Kinkaid.

Q. When you returned did you go to see Mr. John I. Wells? A. Yes, sir.

Q. That was when you returned?

A. Yes, sir.

(Testimony of George Bayhouse.)

Q. And what did you go to see him for?

A. I went to him to get the location, and he told me to go to Mr. Kinkaid.

Q. You went to see Mr. Wells to get the description of the land?

A. Yes, sir.

Q. That was the day after your return?

A. Yes, sir.

Q. Did Mr. Downs return with you?

A. No, sir.

Q. Do you know whether he remained up there?

A. Yes, sir, he was there when I left.

Q. And this sworn statement that I showed you, which is the first paper you filed in the land office, who prepared that paper for you?

A. I don't know who did prepare this paper. I don't see the description in this—yes, here it is. That is the paper I got of Mr. Kinkaid.

Q. What did Mr. Kinkaid charge you for preparing that paper?

A. Nothing.

Q. And was it prepared when you went there?

A. No, I think I had to go the second time, as near as I remember.

Q. Did you go the second time the same day?

A. Yes, sir, I believe it was the same day, in the forenoon and the afternoon, my recollection of it.

Q. To whom did you pay the locating fee?

A. I paid it to Mr. Wells.

Q. That is Mr. John I. Wells?

A. Yes, sir.

Q. How much was it?

A. \$25.

Q. And then you filed that paper in the land office?

(Testimony of George Bayhouse.)

A. Yes, sir.

Q. Did any of the other parties that you were with that you have named go to Mr. Kinkaid's office with you at the time you got this paper?

A. No, sir.

Q. You went alone? A. Yes, sir.

Q. Were any of them there when you went?

A. They went separately. None of my party was with me.

Q. I say separately—I didn't wish to assume that they had gone there. It was the form of the question. What did you propose to do with this property when you located on it?

A. I expected to make something out of it if it was possible.

Q. Did you know anybody at that time that was buying? A. No, sir.

Q. Hadn't heard of anybody that was buying timber claims?

A. No, sir. I just knew that it was being bought, understood that it was being bought, but didn't know anything about parties that was buying it.

Q. Were you taken to one timber claim when you were up there with Mr. Downs, and shown that?

A. Yes, sir.

Q. That was the one you were to take?

A. Yes, sir.

Q. And the rest of the party—was it done the same way? A. Yes, sir.

Q. Now, shortly after you made your original filing you had to go to the land office and make your

(Testimony of George Bayhouse.)

final proof? A. Yes, sir.

Q. And you had to pay some money at that time?

A. Yes, sir.

Q. How much was that that you paid?

A. \$400.

Q. Do you remember where you received that money with which you paid that \$400?

A. I had the money myself.

Q. Do you remember how long you had had it?

A. Oh, I had had money for years before that time; I was in the hardware business ever since I was eighteen, and saved money every year. Sometimes I would have it in the safe, and sometimes in the bank, and sometimes on the books credited up.

Q. I mean that particular money you paid at the land office. Do you remember where you got it from the day you paid it at the land office?

A. Yes, sir, I got it out of the safe.

Q. It was in cash, was it? A. Yes, sir.

Q. And do you know how long you had had it in the safe? A. No, I don't.

Q. Had you had it in there a day, or six months, or how long?

A. I don't know as I had had it in there very long, because I had just come back from the east. I had been away from the city and just got back from the east in time to prove up.

Q. Now, before you had gotten your final proof, had you made any negotiations to sell this?

A. No, sir.

Q. Do you know whether Mr. Henry Bayhouse

(Testimony of George Bayhouse.)

sold before you did or not?

A. Yes, sir, he did.

Q. How long did he sell before you?

A. I don't know about that because I was back east when he proved up and sold it.

Q. Do you know how long he proved up before you did?

A. No, sir, I don't know that.

Q. Did he tell you to whom he had sold?

A. Yes, sir.

Q. To whom?

A. I went to him to find out where I could dispose of it, and he told me to go to Mr. Kinkaid.

Q. And you went to Mr. Kinkaid?

A. Yes, sir.

Q. What was your idea of the value of this property, Mr. Bayhouse?

A. I hadn't much of an idea. I don't know that it ever entered my head to calculate what it was worth.

Q. How long after you paid your money into the land office and got your proof did you sell this land?

A. It was about ten, or eleven, or twelve days.

Q. How long after you made your proof did you start negotiations for the sale of the land?

A. Well, I went up—I don't know—the day before I sold it I went up there, and the next day the papers were made out, and I sold it.

Q. Did you go to see Mr. Pritchard?

A. Kinkaid.

Q. At his office?

A. Yes, sir.

Q. And did you tell him what you went there for?

(Testimony of George Bayhouse.)

A. Yes, sir.

Q. What did you say to him?

A. I told him I had a receipt for the location, timber location, and I would like to sell it if he was buying, and he said he was.

Q. Now, that is the first time that anybody had talked with you about purchasing this property, either before you entered or after you entered it, except Mr. Bayhouse, your brother?

A. Yes, sir.

Q. When Mr. Kinkaid prepared those papers for you did he suggest to you that he was buying timber claims in that locality?

A. He didn't say anything at all in that respect; just said he would make out the papers.

Q. Did Mr. Wells, on the occasion that you saw him, state that he knew of anybody that was buying property?

A. No, sir, I didn't ask him.

Q. Did he venture it himself?

A. No, sir.

Q. Did you sell to Mr. Kinkaid the day you were there?

A. Yes, sir.

Q. And made the deed that day?

A. Yes, sir, or the next day after; I went one day and made the deed the next day.

Q. You left the papers with him that you got at the land office, the receipt?

A. Yes, sir.

Q. Did he pay you that day?

A. He paid me the day I signed the deed.

Q. How much did he pay you?

A. \$800.

Q. Do you remember whether it was his personal check?

A. Yes, sir.

(Testimony of George Bayhouse.)

Q. What did you do with the check?

A. I took it to the First National Bank.

Q. Deposit it or get the cash?

A. I don't remember what I did with it now; I think I deposited it.

Q. Did you notice that the consideration mentioned in the deed when you signed it was \$1000?

A. I don't remember that now. I see that it is.

Q. Did you notice to whom the deed ran, who was the grantee in it?

A. Yes, sir, I read the name at the time, but I had forgotten it.

Q. Did you know Mr. Horace S. Rand?

A. No, sir.

Q. Had you ever heard of him before?

A. No, sir.

Q. Before whom did you acknowledge this deed?

A. I think before Pritchard.

Q. Did he have an office in the same building with Mr. Kinkaid?

A. No, sir, I think we went over to the Sonna building.

Q. You and Mr. Kinkaid went over to Mr. Pritchard's office? A. Yes, sir.

Q. Had you heard it stated, or rumors to the effect that these parties that you named were purchasing timber claims? Had you heard that they were even asking people to enter into agreements with them to sell the land? A. No, sir.

Q. Were you ever asked to make any other deed but this one? A. No, sir.

(Testimony of George Bayhouse.)

Q. And I assume then that you never did make but the one deed? A. I never did.

Q. Do you know when your brother Frank sold his, and to whom he sold it?

A. He sold it while I was in the east.

Q. And Mrs. Lilah Bayhouse, do you know when she sold hers?

A. She sold while I was east.

Q. And Mrs. Bilderback?

A. While I was in the east.

Q. Did you meet Mr. Harry S. Worthman in this transaction at all? A. No, sir.

Mr. GORDON.—We offer in evidence the sworn statement of George Bayhouse, dated September 24, 1902; his testimony on final proof before the land office, dated March 13, 1903; the cross-examination identified by Mr. Bayhouse, and signed by him, attached; the testimony of the witnesses before the land office; the non-mineral affidavit of Mr. Bayhouse, dated September 24, 1902; the proof of publication; the certificate of the register and receiver of the land office, dated March 13, 1903; the patent; and the deed, dated March 24, 1903, of George Bayhouse to Horace S. Rand, all to the northeast quarter of section 28, township 7 north of range 8 east, Boise Meridian.

(George Bayhouse papers marked Plaintiff's Exhibit No. 56A to 56M inclusive.)

Cross-examination.

(By Mr. BUNDY.)

Q. Mr. Bayhouse, I was wondering why there was

(Testimony of George Bayhouse.)

such a long lapse of time from the time you first filed until you made your final proof. Sixty days it ordinarily runs, and I notice by the notice of publication filed here that as it was first written you were to prove up on the 13th of January, and that was changed to Friday, the 13th of March.

A. Yes, sir, I was interested in a mining proposition, incorporated mining proposition, and the president was here, and I was secretary of it, and we had business to go back to Danville, Illinois, the home of the stockholders of the corporation, and I had to be gone sixty days, and I went to the land office and asked them to extend that time.

Q. It probably had to be republished, didn't it?

A. No, sir, not that I know of.

Q. Mr. Bayhouse, I have been waiting for some witness who could tell the Court, somewhat in detail, the extent to which the people of this city, men, women, business men, and others, at or about this time when you made your application, were availing themselves of their rights under the Timber and Stone Act, and I think perhaps you would be a good one to tell it.

Mr. KEIGWIN.—We object to that on the ground that it is palpably immaterial.

A. The road was lined with people going up there and coming back while I was on the road, and I don't remember how long I stayed there; I think it was three days. It took a day to drive up and back, and there wasn't a day that I was up there but what maybe three rigs, two or three or four or more came up

(Testimony of George Bayhouse.)

there.

Q. Now, speaking generally, what class of people was it that were availing themselves of their rights?

A. They were all a good class of citizens.

Q. People in business here, largely?

A. Yes, sir.

Q. And their wives?

A. Yes, sir, all professions.

Q. It was sort of a fad? A. Yes, sir.

Q. They would make up a sort of combination picnic party and location party?

A. That's what I did, went up hunting, fishing, tried to get a deer, but couldn't find it.

Q. Then it wasn't necessary for Mr. Downs, or Mr. Wells, or anybody else to go around soliciting people to take timber and stone claims?

A. Not so far as I was concerned, they didn't have to come to me; I was looking them up.

Q. Now, with reference to Mr. Downs locating you, you said **he** pointed out a particular piece that you could take. You don't wish to be understood that he said that **was** the only piece you could take?

A. Not at **all**.

Q. And his **direction** to you was as your employee, advising you **what** he thought was one that was of sufficient value **to** warrant you in taking it?

A. Yes, **sir**.

Q. You **didn't** understand that Mr. Downs was locating you **for** somebody else? A. No, **sir**.

Q. But your understanding was that he was ad-

(Testimony of George Bayhouse.)

vising you to enter one that was sufficiently valuable to enter?

A. Yes, sir, that was all. I am pretty well acquainted with the mountains myself, and if the timber hadn't suited me I wouldn't have taken it.

Q. I think you said that Mr. Downs, as you remembered, didn't give you a description. Do you know whether he gave any of the party the descriptions?

A. He just gave me them verbally; he just told me the township corners; he told me that verbally when I was there.

Q. Did you make a note of it?

A. No, sir, I did not.

Q. Did any of the other parties have any description?

A. As far as I went—I went to two other locations, my sister and my sister in law—I went with them to their locations, and then departed from the company and brought the ladies home.

Q. Did he send back any note or anything to Mr. Wells that you know about?

A. Mr. Wells was with the party.

Q. Up there at that time?

A. Yes, sir.

Q. So, when you got down here you paid Mr. Wells the locating fee? A. Yes, sir.

Q. You understood at that time that Mr. Wells and Mr. Downs were in partnership as locators?

A. That is as I understood it.

Q. And Mr. Wells, instead of making out the

(Testimony of George Bayhouse.)

papers, suggested your going to Mr. Kinkaid?

A. Yes, sir.

Q. Did he give you to understand that Mr. Kinkaid had anything to do with this partnership?

A. Not that I know of.

Q. Simply suggested that he was a man who knew how to make out papers?

A. Yes, sir.

Q. And you went there?

A. Yes, sir.

Q. At the time you made your original application to purchase this land, Mr. Bayhouse, had you entered into any kind of agreement, in writing or verbal, express or implied, by which you had agreed to turn over the land you might acquire from the Government, or any interest in it, or the timber upon it, to any of the defendants in this action, or to any other person?

A. None whatever.

Q. Had you entered into any such agreement at the time you made your final proof?

A. No, sir.

Q. It is alleged in this bill of complaint in this action we are now trying that you made this timber and stone entry pursuant to a conspiracy and agreement with the Barber Lumber Company, and the other defendants named, by which you had agreed to turn it over to them as soon as you got it. Is that true or false?

A. I certainly did not.

Redirect Examination.

(By Mr. KEIGWIN.)

Q. Mr. Bayhouse, were you acquainted with Mr. Downs before you met him up there in the woods?

(Testimony of George Bayhouse.)

A. No, sir.

Q. That was the first time you had seen him?

A. Yes, sir.

Q. Were you acquainted with Mr. Wells before you met him here in this business?

A. I know him by sight for maybe a year or two before I had ever met him.

Q. Had you had any personal acquaintance with him? A. No, sir.

Q. Ever spoken to him since? A. Yes.

Q. Had any business with him since?

A. No, sir.

Q. Did you know Mr. Kinkaid?

A. Yes, sir.

Q. Personally?

A. Yes, sir, he used to come into the hardware store to buy goods.

Q. Had you had any professional relations with him? A. No, sir.

Q. Had you known Mr. Pritchard?

A. Yes, sir.

Q. Was he a lawyer?

A. I think that was what he was doing, yes, sir.

Q. Had you had any business or professional relations with him?

A. No, sir, not only in a business way. There was hardly a man in the county that didn't buy hardware. I was bookkeeper and clerk there, and sold goods personally, and kept the books, and knew at one time every man's name in the county.

Q. Do you know Mr. Fraser, one of counsel for

(Testimony of George Bayhouse.)

the defendants here? A. Yes, sir.

Q. Have you had any conversation with Mr. Fraser about this case since you were subpoenaed as a witness? A. No, sir.

Q. Had no conversation with him about anything? A. No, sir.

Q. You met him in the hall and talked with him?

A. Yes, sir.

Q. But not about this case?

A. About some evidence in this case. I spoke to him about some evidence my sister had given in this case. She spoke to me and I went to him.

Q. Who is your sister?

A. Mrs. Emma Bilderback. She came to me and told me she had made a mistake and wanted to know if she could be corrected, and I went to Mr. Fraser and asked him about it, and he told me if she wanted to come back she could do so.

Q. Did you say anything to Mr. Gordon or me about it? A. No, sir.

Q. That was the extent of your conversation?

A. Yes, sir.

Mr. BUNDY.—I didn't ask you what your business was in 1902.

A. I was clerk and bookkeeper in a hardware store.

Mr. KEIGWIN.—Q. Have you, since you have been subpoenaed, been requested by any of the representatives of the Government to be interviewed in one of the rooms here? A. Yes, sir.

Q. When was that? A. Saturday.

(Testimony of George Bayhouse.)

Q. Was the man who wanted to interview you either of the attorneys here?

A. No, sir.

Q. Some other man? A. Yes, sir.

Q. You don't know who or what he was?

A. No, sir.

Q. So far as you know, have all the witnesses—do you know of other witnesses who have been requested to go to one of these rooms and be interviewed by someone not connected with the case?

A. Yes, sir.

Q. Mr. Bayhouse, do you know the name of the gentleman who interviewed you on behalf of the Government last Saturday?

A. I think his name is Watts.

Q. You didn't know what official position he held? A. No, sir.

Q. And he asked you some questions?

A. Yes, sir.

Q. Took you over very much the same ground Mr. Gordon has taken you over this morning?

A. Yes, sir.

Q. And made notes? A. Yes, sir.

Q. I show you this paper, and ask you if that appears to be the paper?

A. I didn't pay any attention to him. I didn't look over to see what he wrote there. This may be the same paper. I couldn't say. He was writing on a paper, but I wasn't looking at what he wrote at all; he was writing with a lead pencil.

Q. And he appeared to be taking down what you

(Testimony of George Bayhouse.)

said? A. Yes, sir.

Q. Make himself disagreeable?

A. No, sir.

Q. Make any threats? A. No, sir.

Q. Intimate that you weren't telling the truth?

A. No, sir.

Q. Make any promises to you? A. No, sir.

Q. Simply talked to you?

A. Asked me some questions, the same as I have been asked here.

Q. You had no reason to conceal anything?

A. No, sir.

Recross-examination.

(By Mr. BUNDY.)

Q. You mean, Mr. Bayhouse, that they asked you the same questions and you told them you would testify—

A. No, sir, I didn't tell him I would testify to anything.

Q. They asked you the same questions, but you told them you would testify?

A. Maybe the same questions.

Q. As to the way you came to enter the land, and how you paid for it, and whether there was any agreement, and all that sort of thing, and you told him there was not, the same as you have told here?

A. Yes, sir.

Q. And notwithstanding that you have been here to testify? A. Yes, sir.

(Testimony of George Bayhouse.)

Redirect Examination.

(By Mr. KEIGWIN.)

Q. And you told him the truth, the same as you had tried to tell here? A. Yes, sir.

Q. You have had some conversation with Wells about this transaction? A. Yes, sir.

Q. Have you had any conversation since you have been subpoenaed in this case?

A. Yes, sir.

Q. What did he say to you?

A. I couldn't say exactly what was said, but we had conversations in regard to the testimony that was offered, the weight of it and so on.

Q. About what was testified to by other witnesses? A. Yes, sir.

Q. He told you what the other witnesses had said?

A. No, not particularly; I don't know what the conversation did amount to. It didn't amount to anything, only that people had made these entries, and what some of the witnesses had sworn to.

Q. Where did these conversations take place?

A. Down in the hall.

Q. How often had he spoken to you?

A. I couldn't tell you that. We would speak every day; maybe it would be sometimes on one subject and sometimes another, not necessarily talking on this case. Sometimes we would talk two or three times, or a dozen times, and maybe not about this case, and then maybe it would come up and we would talk about this case.

(Testimony of George Bayhouse.)

Q. What, in a general way, did he say about this case?

A. I can't remember; there was nothing only discussing what evidence had been offered.

Q. Did he say to you that he thought the Government wasn't making very much of a case?

A. No, sir.

Q. He didn't say that? A. No, sir.

Mr. BUNDY.—Q. Mr. Wells didn't assume to ask you what you were going to testify to?

A. No, sir.

Mr. KEIGWIN.—Q. You say he didn't ask you what you were going to testify to?

A. No, sir.

Mr. KEIGWIN.—Mr. Examiner, we would like to have the record show that Mr. Wells was present at the session this morning, with the exception of a few short absences from the room, and that he was the only person who was not either of counsel or a witness, or the Examiner, or the stenographer, who was present in the room during this time.

Mr. BUNDY.—In other words, that there wasn't any larger audience; that there was a small audience.

(Witness excused.)

Here an adjournment was taken until two o'clock of the same day, at which time court met, pursuant to adjournment, the Examiner and counsel for the respective parties being present.

[Testimony of Frank Bayhouse, on Behalf of the Complainant.]

FRANK BAYHOUSE, produced as a witness on behalf of the complainant, being first duly sworn, testified as follows:

Direct Examination.

(By Mr. GORDON.)

Q. Your name is Frank Bayhouse?

A. Frank Bayhouse.

Q. And what is your business, Mr. Bayhouse?

A. I am engaged in the florists and mining business.

Q. What was your occupation in 1902?

A. Miner.

Q. And you were engaged in mining at that time?

A. Yes, sir, I was engaged in mining at that time.

Q. I will ask you if you took up a timber and stone claim in 1902?

A. Well, if that has reference to the time, of course I couldn't state the time.

Q. I show you timber and stone land sworn statement, dated September 24, 1902, and ask you if you signed that? A. Yes.

Q. And you filed that paper in the land office?

A. Yes, sir.

Q. I show you non-mineral affidavit, dated September 24, 1900, this is dated, and also dated at the end,—the certificate shows September 24, 1902—and ask you if you signed that. A. Yes.

Q. I show you testimony of Frank Bayhouse on

(Testimony of Frank Bayhouse.)

final proof before the land office, dated February 5, 1903, and ask you if that is your signature?

A. That is my signature.

Q. I show you the cross-examination attached, and ask you if that is your signature?

A. It is, yes, sir.

Q. I show you deed made by Frank Bayhouse, February 17, 1903, running to Horace S. Rand, and ask you if that is your signature?

A. Yes, sir.

Q. And you acknowledged that deed, did you?

A. I acknowledged it, yes, sir.

Q. Who first spoke with you about taking up a timber claim?

A. It was my brothers, Henry and George Bayhouse.

Q. What did they say to you about it?

A. They told me that timber land was being taken up, and that they knew of several parties who were taking up timber land, and that it was a good investment.

Q. Did they tell you of anybody that was selling timber claims?

A. Any parties that were selling timber claims?

Q. Yes. A. Not to my knowledge.

Q. Did you know anybody that was buying timber claims at that time?

A. Not to my personal knowledge.

Q. Did I understand you to say you didn't know anybody that was purchasing timber claims at that time?

A. I did not know anybody to my knowledge,

(Testimony of Frank Bayhouse.)

although I heard there had been.

Q. Did you know who the people were that were purchasing lands? A. No, I did not.

Q. And you eventually got it in your mind to take up a timber claim, and went up to view the land?

A. Yes, sir.

Q. Did you go with your brothers when they went?

A. I went with George Bayhouse, and my sister in law, and my sister, Mrs. Bilderback.

Q. And who was your sister in law?

A. Mrs. Bayhouse.

Q. Where did you go, what place?

A. Kempner's ranch, Boise county.

Q. Did you know who was going to locate you before you went there.

A. I did not; I had made no arrangements for any locator.

Q. And you met the locator there?

A. I met him at Kempner's ranch.

Q. What was his name?

A. Patrick Downs.

Q. Did you have any arrangement there with Mr. Downs about what he was to be paid for locating you? A. No, nothing at all.

Q. And he located the party?

A. He located the party.

Q. Did he locate you on a certain piece of land, or did he take you over a number, and give you your choice?

A. No, he located me on a separate piece of land.

(Testimony of Frank Bayhouse.)

Q. Took you out to a certain piece of land and said, "That's the piece for you?"

A. He took me out and says "How's this?" He says, "This is your corner," and pointed to the corner; I saw the corner on a tree.

Q. He pointed you out a piece, as I understand, and said "This is yours. How is it—all right?" Is that right? A. Yes, sir.

Q. Did he give you a description of it or did you get the description after your return here?

A. I got the description after I returned here, but he showed me the corners at that time.

Q. Who did you get the description of the land from? A. I got that from Mr. Kinkaid.

Q. Did you see Mr. Wells after you came back before you went to Kinkaid's office?

A. I think that, to my knowledge now, that I went to Mr. Kinkaid's office first.

Q. And did you go to Mr. Wells the same day?

A. Mr. Wells—I couldn't state whether I went to Mr. Wells the same day or not.

Q. Did Mr. Downs tell you to go to Mr. Wells to get your description?

A. I asked Mr. Downs who I should pay for locating me, and he says, "Go settle with Mr. Wells."

Q. Did you know Mr. Wells before that?

A. I had met him in the Basin several years previous to that—just how many I couldn't state—but he was a young man at that time, and he had changed so that I didn't know him, and I never saw him since

(Testimony of Frank Bayhouse.)

till that time I went up there to pay him for being located.

Q. And the day you paid him for this, did he give you a description of the land, or where did you get that from, with which to have your papers prepared?

A. Mr. Kinkaid prepared the papers; I merely paid Mr. Wells the \$25 for locating.

Q. Did Mr. Downs tell you to go to Mr. Kinkaid's office? A. No, I don't think he did.

Q. Why did you go there?

A. Well, the boys told me, I believe that Henry and Al were located previous to my location, and they told me where to go.

Q. Didn't Downs say anything about it?

A. Not that I have knowledge of, no.

Q. Where did you expect Mr. Kinkaid to get a description of this property? You didn't have it?

A. I supposed that he knew his business. I supposed—afterwards it came to my mind that they were locating timber and knew what they were doing.

Q. Did you understand that Downs had sent or would send the description to Mr. Kinkaid?

A. I understood that I would get the plat of my claim after I got here to Boise.

Q. Who did you understand you would get it from?

A. I didn't understand at that time who was to give them to me.

Q. You did get your papers from Mr. Kinkaid?

A. I got my papers from Kinkaid.

Q. And the first paper, the sworn statement, did

(Testimony of Frank Bayhouse.)

Mr. Kinkaid prepare that for you?

A. That is my signature all right.

Q. I mean—that is the first paper you filed in the land office—did you get that paper from Mr. Kinkaid?

A. Yes, sir, I got the first paper from Mr. Kinkaid.

Q. And that is the paper you filed up in the land office?

A. Yes, sir.

Q. Did Mr. Downs, or Mr. Wells, or Mr. Kinkaid indicate to you at that time that they were purchasing these timber claims or knew somebody that would purchase them from you?

A. No, sir, they never spoke a word to me. In fact I never met Mr. Kinkaid before I went up to get my first papers.

Q. Did you pay Mr. Kinkaid for drawing this paper for you?

A. No, I don't think I did.

Q. And you took that to the land office, and then you filed it?

A. Yes, sir.

Q. Then you had to publish this land?

A. Yes, sir.

Q. Advertise it?

A. Yes.

Q. And did you name your witnesses, or did somebody furnish them for you?

A. As to that I couldn't state, although I knew the parties that were up there at the time I was there, and they were my witnesses.

Q. Was Mr. John I. Wells up there at that time?

A. Yes, sir. He went out with us.

Q. He went with you?

(Testimony of Frank Bayhouse.)

A. He went with us.

Q. Did you meet him there, or did you go from Boise with him?

A. No, I think he came a day after, because we were there two or three days before we located.

Q. You saw him up there? A. Yes, sir.

Q. Have any talk with him up there?

A. I did not, not with reference to these claims at all; the matter wasn't introduced at all.

Q. Did he come back with you?

A. No, he left the same day we did; I believe he came to Boise a few hours ahead of us.

Q. There wasn't anything said to you then about paying Mr. Wells? A. No, there was not.

Q. That money, about paying Mr. Wells?

A. No, I asked Mr. Downs about who I was to pay, and he said it would be all right to pay Wells in Boise.

Q. I notice here what they call a notice for publication. Where did you get that, if you know? Did Kinkaid prepare that?

A. I couldn't state positively.

Q. Did he go to the land office with you?

A. He did not.

Q. Did Mr. Kinkaid prepare the non-mineral affidavit you swore to?

A. Well, that is my signature all right, and I suppose that he must have; the first papers were prepared there.

Q. It is dated the same day as the first papers. Do you know Mr. Kinkaid's handwriting?

(Testimony of Frank Bayhouse.)

A. No.

Q. After you filed these papers in the land office, in sixty or ninety days it came time to make your final proof. Do you remember the occasion of going to the land office and making your proof?

A. I do.

Q. Do you remember how much money you paid at the land office at that time?

A. I paid them four hundred and some odd dollars.

Q. Do you know how much?

A. I couldn't state exactly.

Q. Do you remember whether you paid that in check or in cash? A. I think I paid it in cash.

Q. Do you remember where you got the money from that you paid it with? A. Yes, sir.

Q. Please state.

A. From Henry Bayhouse.

Q. Did you give him a note for it?

A. I think not.

Q. Did you pay any interest on it?

A. I understood that I was paying interest on it, and did pay interest on it.

Q. Do you know where he got it from?

A. Peter Sonna, so he told me.

Q. And you were to return this money when?

A. I was to return it.

Q. Repay it afterwards?

A. I was to repay it when I got the money to do so.

Q. Was any time fixed? I mean, did you borrow

(Testimony of Frank Bayhouse.)

it for a week, or six months, or wasn't there any time? A. Indefinitely.

Q. And who were you to repay it to, Mr. Bayhouse or Mr. Sonna?

A. I was to pay it to Mr. Bayhouse.

Q. Which Mr. Bayhouse was this?

A. Henry Bayhouse.

Q. Now, how much did you calculate that this land, or the timber on the land, was worth?

A. Well, I thought it was worth about \$1 or \$1.25 a stump.

Mr. BUNDY.—Per thousand stumpage?

A. Yes.

Mr. GORDON.—Q. And how much did you approximate it would all come to? I mean, how much was the land and the timber on it worth?

A. Well, I supposed probably—I don't know—I should judge about a million feet on it or a little over; I hadn't figured it up at that time.

Q. How much would that be worth?

A. It would be according to the number of feet in a tree.

Q. I mean, how much did you think this claim was worth?

A. I thought probably it was worth \$2,000 at the time.

Q. And you made your final proof on February 5, 1903. Is that correct?

A. I guess so, yes, sir.

Q. And how long after that was it that you were approached or approached somebody with the view

(Testimony of Frank Bayhouse.)
of selling this property?

A. I received a letter—if I remember right, I was over at the Uinta mine, in the Pearl Mining District—and I received a letter there from my brother, stating that if I wanted to sell my claim I should come—that there was parties offering money for the claim.

Q. And you went in, and who did you go to see to sell it? Or did someone come to see you?

A. There was no one came to see me at all. I went to the same parties my brothers had sold to.

Q. Who was that? A. Mr. Kinkaid.

Q. Did you tell him you had your receipts there, and was there to do business, to sell this property?

A. Yes, sir, and I told him that if he wanted my timber claim—that I understood that everybody had sold—and if we could agree on the price he could have it.

Q. How much did he offer you for it?

A. If I am not mistaken, he offered me \$750, and he says he had been to considerable expense, and he wanted me to remit him some of this money, a rake-off.

Q. What did you understand he meant by he had been to a great deal of expense?

A. I understood that he wanted to make a little more money, that was all. I inferred that he was buying up this timber land and he wanted to make some money on it.

Q. That he was buying it for somebody else and wanted to make something on it himself?

(Testimony of Frank Bayhouse.)

A. No, I thought he was buying it for himself for an investment.

Q. Then you made the deed?

A. I deeded it to him—not for \$750—I think I got \$800.

Q. And you read the deed over that you signed?

A. Yes.

Q. Did you notice that this was a grant to Horace S. Rand?

A. Yes, I noticed it was.

Q. Did you still think then that he was buying for himself, or for Mr. Rand?

A. I didn't think anything of it at that time.

Q. How many times did you see Mr. Kinkaid with reference to selling this property?

A. Only once.

Q. And you made the deed at that time, and acknowledged it before Mr. L. M. Pritchard?

A. Yes, sir, Mr. Pritchard, in the Sonna Building.

Q. Did you go out across the street with Mr. Kinkaid?

A. No, sir, I went alone.

Q. Had you known Mr. Pritchard before?

A. I had known him by sight—never spoke to him.

Q. Who introduced you to him, or did you introduce yourself to him and tell him what you came for?

A. Yes, sir.

Q. And Mr. Kinkaid gave you this money in check or cash?

A. He gave it to me in check.

Q. What did you do with the check?

(Testimony of Frank Bayhouse.)

A. I cashed it.

Q. Do you remember what bank it was drawn on?

A. I tell you, the bank has moved since then, and I couldn't tell you what bank it was. It was in the same building that the Boise National is now.

Q. And was that check for \$800?

A. The check was for \$800.

Q. You first paid Mr. Sonna the money you borrowed?

A. I didn't pay him. My brother paid him, with interest.

Q. Do you remember how much it was that you got from your brother?

A. I couldn't state positively.

Q. What is your best recollection?

A. In the neighborhood of \$400.

Q. And were you ever asked to make another deed, or did you make another deed to this property?

A. No, sir, I never did; just the one deed.

Mr. GORDON.—We offer in evidence the timber and stone sworn statement of Frank Bayhouse, dated September 24, 1902; the notice for publication, dated September 24, 1902; affidavit as to the non-mineral character of the land, dated September 24, 1902; the testimony of claimant on final proof, dated February 5, 1903; the cross-examination thereto attached; and the testimony of the witnesses, and the cross-examination thereof, on final proof; the certificates of the register and receiver, dated February 5, 1903; the patent; and the deed, dated February 17, 1903, made by Frank Bayhouse, to Horace S. Rand,

(Testimony of Frank Bayhouse.)

to the north half of the southeast quarter, and the north half of the southwest quarter of section 19, township 7 north of range 8 east, Boise Meridian.

(Frank Bayhouse papers marked Plaintiff's Exhibit No. 57A to 57N inclusive.)

Cross-examination.

(By Mr. BUNDY.)

Q. Mr. Bayhouse, you were asked some questions about the manner in which Pat Downs located you up there, apparently with the intention of conveying the idea that Mr. Downs was just telling you what your timber was, and that he and not you was making the selection. Now, I understand, at that time Pat Downs was simply acting as your locator and cruiser and employee in selecting a place for you to locate on if you wanted to, or what was your understanding?

A. Well, my idea was that he knew the timber better than I did, and if the piece suited me I would take it.

Q. You didn't understand that you were under any obligations to take whatever he told you to?

A. No, I did not.

Q. These descriptions of the land, which were afterwards used in making these papers before the land office, I suppose you don't know whether Mr. Wells brought them down, or how they got here?

A. I couldn't say.

Q. In any event, they were brought down by someone, and the papers prepared in Mr. Kinkaid's office which you filed? A. Yes, sir.

(Testimony of Frank Bayhouse.)

Q. Now, at the time you filed your original papers, Mr. Bayhouse, you signed a paper, like other entrymen, in which, among other things, you said that at that time you had not entered into any agreement, of any kind or character, express or implied, by which the title you might acquire from the Government to this entry should inure in whole or in part to the benefit of any firm or corporation. That was absolutely true at the time, was it not? That is true, is it not?

A. Yes, sir.

Q. It is and it was equally true at the time you made your final proof?

A. Yes, sir.

Q. It is alleged that you made this timber and stone entry for the benefit of the Barber Lumber Company and the other defendants named. Is that true or false?

A. I did not.

Q. It is alleged that you made that entry pursuant to an agreement that as soon as you got title you would convey it to the defendants, or one of them, or to some person they would say?

A. I had no agreement of any kind.

Q. So that allegation is false?

A. Yes, sir.

Q. Well, you say you concluded to sell your land for less than you thought it was worth?

A. Everyone had sold around us, and there wasn't a sufficient number of us to hold out, and we couldn't do anything with the timber.

Q. As a matter of fact, Mr. Bayhouse, at or about that time, wasn't there quite a move among people who had located to hold out for a higher price and

(Testimony of Frank Bayhouse.)

refuse to sell for the price that was then going?

A. Yes, sir.

Q. It was called among the entrymen an attempt to form a pool, to hold out for a better price.

A. I understood that there was remarks passed, but no one ever broached the subject to me, only in conversation that they would hold out if the rest did.

Q. The idea being that one piece of land would have to be sold anyway, but if they had a large enough tract it would be an inducement for manufacturers to pay a larger price? A. Yes, sir.

Q. That was common talk among the entrymen on Crooked river? A. Not on Crooked river.

Q. I meant among the people who had located there.

A. Yes, I understand. I didn't hear anyone say anything about this only my brothers.

Q. But you did know that there was such talk?

A. Yes, sir.

Q. Now, you spoke of Mr. Kinkaid. Did you understand at that time that Mr. Kinkaid was engaged in the business of buying up these timber claims for Horace S. Rand, or for someone Horace S. Rand represented, at a certain price, and the least he could buy them for the more he made, at the time you went to sell to him?

A. Yes, that is what he asked me to do.

Q. The less he paid for the claims the more he would make when he turned them over to the people he represented?

A. I didn't know anything about that. I sup-

(Testimony of Frank Bayhouse.)

posed he would make a little more money on it.

Q. You spoke about going to Mr. Pritchard. You didn't understand that he had any other connection with this than as a notary public, did you?

A. That is what I understood—that he was hired by them to take acknowledgments.

Redirect Examination.

(By Mr. GORDON.)

Q. Mr. Bayhouse, have you talked with any of the officers, agents, or representatives of the Government with reference to your statement that you have made here?

A. Not at all.

Q. Or the testimony that you have given?

A. No, nothing.

Q. Has any attorney, officer, or agent of the Government asked you to make a statement as to what you would testify to here?

A. No, sir, no one has.

Q. Have you talked to John I. Wells?

A. Never mentioned the subject at all.

Q. Have you talked to Mr. Wells about anything in the last few days?

A. No, sir, nothing at all in regard to timber, or anything else; I haven't seen him to talk to him for at least a year.

Q. Have you talked to him within the last two weeks?

A. I never had any conversation with John I. Wells about any timber before I went up and paid him for his services.

Q. Have you talked with Mr. Bundy or Fraser?

(Testimony of Frank Bayhouse.)

A. I am not acquainted with Mr. Bundy.

Q. Have you talked with Mr. Fraser?

A. I have not.

(Witness excused.)

Mr. KEIGWIN.—Counsel for the complainant in this cause have been informed that his morning Mr. Fraser, of counsel for the defendants, went from this room into the corridor adjoining, and announced to the witnesses who were subpoenaed for the Government, and who were waiting there to be called, that it was not necessary or proper that any of them should hold any conversation with Mr. Watts, or Mr. Wade, or Mr. Dunning, or Mr. Melrose, or any other agent of the Government, in reference to the testimony to be given by them, the said witnesses; that this communication was made in such a manner as to be audible and understood by all, or most of such witnesses then in attendance, and they were counseled and cautioned not to enter the room occupied by Mr. Watts, the special agent of the Department of Justice, for the purpose of being interviewed with respect to the testimony intended to be given by them.

Mr. FRASER.—Mr. Fraser, being present and hearing this statement, says that said statement is not true as stated. Mr. Fraser admits that he did go into the hall and announce in the hearing of the witnesses there present, under subpoena—whoever was present—that they were not under compulsion, and they didn't have to go into the room and talk to any of these gentlemen, or anyone else, in regard to any of the transactions relating to which they were

subpoenaed to testify to, unless they saw fit to do so, voluntarily and of their own free will.

Mr. KEIGWIN.—And this was made in the presence and hearing—

Mr. FRASER.—(Interrupting.) Whoever was present I expect heard me, and I did make that statement.

Mr. KEIGWIN.—And with the purpose and intention of preventing them from holding any conversation with the agents of the Government?

Mr. FRASER.—No, not with any intention of that kind—with the intention of informing them of their rights. Counsel wishes to state that a great many witnesses subpoenaed here under process issued from this court would go into these offices and be interviewed by parties who are not attorneys either for the plaintiff or defendant, under the impression that they were compelled to do so, and I wished to inform them, and did inform them, that they were under no obligation to do so unless they wished to, as following out the instructions of the Examiner theretofore made in this action.

Mr. KEIGWIN.—Not as counsel for the defendants, I take it?

Mr. FRASER.—No; as a friend of the witnesses.

Mr. KEIGWIN.—We will ask that this matter be carried on the record and certified to the Court for such action as may be proper in the premises.

[Testimony of John G. McDonald, on Behalf of the Complainant.]

JOHN G. McDONALD, produced as a witness on behalf of the complainant, being first duly sworn, testified as follows:

Direct Examination.

(By Mr. GORDON.)

Q. Your name is John G. McDonald?

A. Yes, sir.

Q. And you took up a claim under the Timber and Stone Act in 1902?

A. Yes, sir, I believe that was the date.

Q. I show you timber and stone land sworn statement, dated May 4, 1902, signed John G. McDonald, and ask you if that is your signature?

A. Yes, sir.

Q. And you filed that paper in the land office?

A. I did.

Q. I show you non-mineral affidavit, dated May 4, 1902, signed John G. McDonald. Is that your signature to that paper? A. Yes, sir.

Q. I show you testimony of John G. McDonald on final proof before the land office, dated August 7, 1902. Is that your signature? A. Yes, sir.

Q. I show you the signature of John G. McDonald attached to the cross-examination attached to the last paper, and ask you if that is your signature?

A. Yes, sir.

Q. I show you deed, dated August 9, 1902, made by John G. McDonald, and Annie L. McDonald, his

(Testimony of John G. McDonald.)

wife, to A. E. Palmer. Is that your signature to that deed, and is that the signature of your wife?

A. Yes, sir.

Q. And you acknowledged that deed before L. M. Pritchard? A. Yes, sir.

Q. Mr. McDonald, who first spoke with you about taking up a timber and stone claim?

A. I don't know the man's name, but he worked for me. I can't remember his name. I was in the painting business then and he worked for me, and I believe that he wanted me to go and locate when he spoke to me about the land, as near as I remember now. He wanted to get off to go and locate timber land. I can't think—I think he was from Minnesota, and then I think he went back there pretty soon.

Q. His name wasn't James, was it?

A. No, sir.

Q. Snow?

A. No, sir, he was a painter by trade, and he worked for me at painting.

Q. And did you understand from him what you would have to do to take up a timber claim?

A. I don't remember. You mean this fellow?

Q. The fellow that spoke to you.

A. When he spoke to me about going, I don't think that we had any talk about me taking up one at that time. I don't believe that this man and myself had any talk about me taking up one, but I know that was when I first heard they were taking up claims.

Q. What induced you to take up a claim?

(Testimony of John G. McDonald.)

A. Well, probably, when he got back—I am not sure about this now; it's a long time ago—when he got back from up there we talked the matter over; and there was another man that talked to me about the land.

Q. Who was the other man?

A. That was William Pearson.

Q. Proceed. What did Mr. Pearson say to you about it?

A. I don't remember now anything about the conversation, but I understood that people were taking up claims, you know, and that there was claims yet to be taken up.

Q. And did you get ready to go up there to take up a claim?

A. Not immediately; I did after a little—I don't know how long—not immediately after this man came back, but I finally did get ready and went up.

Q. Did you go alone, or with whom did you go?

A. I went with Mr. James and Mr. and Mrs. Arbuckle.

Q. Mr. Charles Arbuckle?

A. I don't know his initials.

Q. Have you seen him here since you have been here?

A. Yes, he is out here now—he was out here this morning.

Q. Well, who arranged the party?

A. Well, I think, as far as I remember now, that Pearson arranged the party to go up, that's all I know about it. I know that—I think that he 'phoned

(Testimony of John G. McDonald.)

up to my house, if I am not mistaken, that there would be a party going, and that a team could be had at one of the corrals here—I think it was the Ransom corral, if I ain't mistaken—that we could hire a team from that place.

Q. Did you make arrangements to meet those people?

A. No, I didn't make any arrangements—I don't remember—I don't think I was in the arrangement—it was Mr. James I think that was doing it—he was the teamster, you know, and whether—I expect we did arrange to meet them, because I remember we went down to the corral and got the team, and drove up on Main street, to somewhere up on the avenue—not very far up—and took those people on, and then went on to Idaho City, or Placerville.

Q. Did you know who was going to locate you before you started?

A. I don't know that I did myself, but somebody knew that Pat Downs was the man that was to locate us. As far as I was concerned myself, probably I had an idea probably that Pat Downs would locate us. I think that was the understanding. That was the talk going out there, but I don't know that I knew before we started.

Q. Did you know how much you were to pay Pat Downs?

A. I believe that it was understood that we were to pay \$25.

Q. Did you pay Mr. Downs \$25?

A. Yes, sir.

(Testimony of John G. McDonald.)

Q. Did you pay it to him personally?

A. Personally.

Q. Where did you pay him?

A. I am not positive where, but I think it was at Centerville.

Q. Did you meet—you met Mr. Downs at Centerville? A. Yes.

Q. How far was the land you located from Centerville?

A. I think my claim wasn't over two miles at the outside.

Q. Did you all go over the land together, or did he take you over separately?

A. We were all on my claim, but that is all I have got to do with, my claim, I suppose.

Q. Did you go on all the others?

A. Yes, I went on all the others.

Q. How did you know which was your claim?

A. It was my claim, because it was separated from the rest.

Q. Did Mr. Downs take you out to your claim and say "This is the one you are to locate on?"

A. Yes, my claim was the last that was located.

Q. What did he say when he got to that claim?

A. He took me around the corners. I don't know whether he took me to all the corners or not, but he showed me the lay of the land, the timber, and the corners by the way. The direct answer is in my final proof in the land office. That is the way I remember now.

Q. What I am trying to get at is this: Whether

(Testimony of John G. McDonald.)

he carried you out there and asked you if you wanted a certain claim in a large body, or whether he took you to a claim and said he would locate you on this one.

A. I think there was no talk about which claim to take, except that we went in the morning and located Mr. James and Arbuckle on one section of the country, and then we came back and located Mrs. Arbuckle, and I was the last, as I remember now, was the last to be located.

Q. You don't understand me. When you went to the claim that you eventually located on, when you got there, was that pointed out to you as your claim?

A. Well, it was pointed out to me as the claim that we went to see. He took us there to see that claim, and he pointed out the land and showed me some of the corners, and I was satisfied with the claim and took it.

Q. Did he ask you if you wanted any other claim?

A. No, sir.

Q. Did he write the description of that property for you?

A. No, I don't remember that he wrote it—he showed me the—

Q. No, I said did he write the description of your property, so that you would know how to have the papers prepared?

A. I don't remember. I don't think he did that on the ground; I don't remember that he did.

Q. How long after that did you make your filing

(Testimony of John G. McDonald.)

—the next day? A. I don't think so.

Q. How long after you came back did you file?

A. I don't remember; it was pretty quick afterwards.

Q. How quick was it—the next day, or two or three days?

A. I can't remember—probably the next day it might be, or it might be two or three days, I can't remember.

Q. Where did you go to get the description which was put in the paper that was filed in the land office?

A. I don't think I went anywhere to get it. I think that description was on one paper for the whole outfit, and I think that somebody else got that description, but I can't remember any of the particulars about that paper.

Q. Do you remember whether you got this paper, this sworn statement, the first paper you filed in the land office, before you went to the land office?

A. I don't remember.

Q. I will ask you to look at it and see whether you know whose handwriting it is, and where you received that paper.

A. It is my signature.

Q. In whose handwriting is the body of it?

A. I couldn't say at all.

Q. Did you go to Mr. Wells' office after you returned to get that paper? A. No, sir.

Q. Did Mr. Wells bring it to the land office?

A. I don't remember anything about Mr. Wells in connection with that paper.

(Testimony of John G. McDonald.)

Q. Was Mr. Wells up there going over this land with you? A. No, sir.

Q. Had you ever met Mr. Wells before?

A. I don't believe I had.

Q. Doesn't that paper say that Mr. Wells introduced you to the receiver of the land office?

A. I don't know—I don't remember. I don't remember anything about this paper. I don't know a thing about it.

Q. Did you say whether or not Mr. Wells went to the land office and introduced you to the register, Mr. King?

A. I should say that it was a very unnecessary thing, because I had known Mr. King for years.

The EXAMINER.—Who gave you the number of the section, township and range?

A. I think that was given on one piece of paper by Downs. That's the way, I think, that it was given by Downs, that is, the description of the whole party.

Mr. GORDON.—Q. Which one of the party was that given to? A. I don't remember.

Q. It wasn't given to you?

A. No, sir, I don't think it was.

Q. Will you say whether or not Mr. Wells went to the land office with you?

A. I wouldn't say, no, because I don't remember anything about that.

Q. Had you met Mr. Wells at that time?

A. No, sir, I didn't meet Mr. Wells. I met Mr. Downs in Idaho City.

(Testimony of John G. McDonald.)

Q. Did you know Mr. John I. Wells at that time?

A. No, sir, I did not; that is, before I went up to prove up, I didn't know him at all.

Q. You didn't know him?

A. When I went up to locate the land.

Q. And you didn't know him until after you had filed this paper?

A. I don't remember anything about the filing of that paper. I don't remember a thing about it.

Q. After you filed that paper, after a certain length of time, you had to make final proof?

A. Yes, sir.

Q. How much did you value this land at; how much did you think it was worth, the land and the timber on it?

A. I thought probably the land was worth probably \$1,000, it ought to be worth \$1,000, and maybe more, \$1000 or \$1200, somewhere along there.

Q. Where did you get your idea or knowledge of what the land was worth? Did someone tell you, or was it your best judgment, or what you heard other property was selling for?

A. I had a faint idea that timber on a big claim like that ought to be worth that, if there was any use for it.

Q. Do you remember when you made your final proof how much money you paid into the land office?

A. If I remember right, it was \$412.

Q. Do you remember whether you paid that in cash or in check?

A. Cash.

Q. Did you draw the money out of the bank that

(Testimony of John G. McDonald.)

day, or state how you did it, and where you got it.

A. I had some of the money in my own house, and I borrowed \$150 of Henry T. James.

Q. Did you give Mr. James a note for it?

A. No, sir.

Q. Did you pay him any interest on it?

A. No, sir.

Q. How long after you borrowed it, if you remember, did you pay it back?

A. I couldn't say; I can't exactly tell.

Q. What is your best recollection of it? I know it has been several years ago.

A. It is a long time ago, and you must remember one thing that probably would settle the question more or less, Mr. James was just about to marry my daughter at the time, and did marry her afterwards, and so wasn't so particular about the dates of paying the money back.

Q. At that time as he might be now? How long after you made your final proof did you have an offer of purchase of this land?

A. It was pretty quick; I don't remember how long.

Q. Was it the same day?

A. No, I don't think it was the same day; I don't remember that it was.

Q. Who was the person that spoke with you about buying it?

A. Nobody spoke to me about buying it. I had a letter from a gentleman.

Q. Who was the gentleman?

(Testimony of John G. McDonald.)

A. Mr. Pritchard.

Q. Mr. Louis M. Pritchard?

A. Yes, that's the name.

Q. Have you that letter? A. No, sir.

Q. Did you get that letter from Mr. Pritchard the day you made your final proof?

A. I don't remember, but I expect I did.

Q. Did that letter come through the mail?

A. Yes, sir.

Q. What did Mr. Pritchard say in his letter?

A. He said something to this effect—I don't know now what he said—but to this effect, anyway, that "I see you have proved up in the land office, and we would like to buy the land," something of that kind; he was in the market to buy the land.

Q. Who did you understand he was buying for?

A. I didn't understand anything about who the land was to go to, or anything of the kind. I supposed the man that sent me the letter was buying the land.

Q. Did you understand that he was buying it for a company at any time? A. No, sir.

Q. Have you ever made any statement or affidavit that you did understand that?

A. I don't remember anything of the kind.

Q. Would you say that you haven't made an affidavit to that effect?

A. Yes, sir, I would that I didn't know that any company was going to buy the land.

Q. Did he tell you to come and see him?

A. Yes.

(Testimony of John G. McDonald.)

Q. Did you go that day?

A. I went the very day I received the letter; that's the way I remember it.

Q. And how long were you at Mr. Pritchard's office?

A. I couldn't say—not very long.

Q. Ten minutes?

A. I couldn't say; it's pretty accurate work to tell seven years afterwards about the time.

Q. I mean, were you there half an hour or half a day? A. It wasn't a very long time.

Q. Did you take your wife with you?

A. I did.

Q. Did you go to see Mr. Pritchard other than the one time with reference to selling this land?

A. That's all; I never saw him before or after that I know of.

Q. And he purchased the land there and then?

A. He purchased the land.

Q. Did he have a deed prepared when you went there?

A. He had some paper there; I don't know what it was.

Q. Was it the only paper that you signed?

A. It was the only paper; I don't remember of signing but the one paper.

Q. And he had that there when you went there?

A. I think he had the paper prepared, or if he didn't, he got it prepared pretty quick afterwards.

Q. How much did he offer you for this land?

A. I think I received about \$750, as near as I can remember.

(Testimony of John G. McDonald.)

Q. Did you read the deed over? A. No, sir.

Q. You just signed the paper he handed you?

A. Yes, sir.

Q. Then you didn't know that this was conveying the property to A. E. Palmer, did you?

A. No, sir.

Q. Did you know Mr. A. E. Palmer?

A. No, sir.

Q. Had you ever heard of Mr. A. E. Palmer?

A. I don't remember that I had; it seems to me I have of late years.

Q. I mean at that time? A. No, sir.

Q. Did you note that that was in consideration of \$1000? A. No, I did not.

Q. And your wife signed at that time?

A. Yes, sir.

Q. Did your wife take up a timber claim?

A. No, sir.

Q. I notice here in your final proof, taken two days before the date the deed was signed, that you say that "I imagine that the timber standing on the land would be worth \$1200 or \$1500," and then two days later you sold it all for \$750. Did you have any discussion with Mr. Pritchard as to whether or not he was offering less for the land than you thought it was worth?

A. I don't think we had any discussion at all about the land.

Q. He offered you \$750 and you took it?

A. I took it.

Q. Do you remember whether he paid you in cash

(Testimony of John G. McDonald.)

or in check?

A. \$750 cash. That's the way I remember it.

Mr. GORDON.—We offer in evidence the sworn statement of John G. McDonald, bearing date May 4, 1902; the non-mineral affidavit of John G. McDonald, dated May 4, 1902; notice of publication, dated May 13, 1902, certified August 7, 1902; the testimony of John G. McDonald given on final proof, dated August 7, 1902; and the cross-examination attached thereto; the testimony of the witnesses before the land office; the certificates of the register and receiver dated August 7, 1902; and the deed, which has been heretofore identified by Mr. McDonald, dated August 9, 1902; also the patent; all to the west half of the northeast quarter, and the southeast quarter of the northwest quarter, and the northeast quarter of the southwest quarter of section 31, township 7 north of range 5 east, Boise Meridian.

(John G. McDonald papers marked Plaintiff's Exhibit No. 58A to 58J, inclusive.)

Cross-examination.

(By Mr. BUNDY.)

Q. You spoke something of the value of the property, Mr. McDonald? A. Yes, sir.

Q. The value of timber land depends pretty largely upon whether there is a sawmill to utilize it in that vicinity.

A. That's exactly what I think.

Q. While that timber land might have been worth ten or twelve hundred dollars, it wouldn't have been worth that to you without a sawmill, would it?

(Testimony of John G. McDonald.)

A. No, sir.

Q. And it was generally understood, was it not, that the people at that time were selling their claims, and that somebody was buying it and getting a good big bunch together, so that it would be worth more?

A. That's the idea.

Q. And it was generally understood that these claims were not sold at that time except at so much per claim? A. That's the way, I believe.

Q. You, I believe, came in a little later and got a little more than some of them had been getting?

A. Yes, sir.

Q. Claims had been selling up to that time for \$650, had they not?

A. I don't know exactly what they had been getting.

Q. So that when you sold your property at \$750 you felt that you were selling it for less than it would really be worth when there was a sawmill to use it.

A. Yes, it was the location. No private individual couldn't make lumber out of it, and you couldn't haul wood.

Q. It was out of the question, except somebody could get enough to build a sawmill?

A. Yes, sir.

Q. I take it from your evidence, Mr. McDonald, that at the time you made your first filing on this land you had no agreement of any kind or character, by which the land you might get should be turned over to anybody? A. No, sir.

Q. And you had no agreement of that kind at the

(Testimony of John G. McDonald.)

time you made final proof? A. No, sir.

Q. It is charged that you and a great many others of the good people of Boise went up there and entered these lands under an agreement that as soon as you got title you would turn it over to the Barber Lumber Company, or someone they should direct. Is that allegation true or false?

A. It's false, as far as I am concerned.

Q. You bought it for your own benefit, and to make as much as you could out of it?

A. That's the idea, yes, sir; I bought it for my own benefit.

(Witness excused.)

[Testimony of Lewis L. Folsom, on Behalf of the Complainant.]

LEWIS L. FOLSOM, produced as a witness on behalf of the complainant, being first duly sworn, testified as follows:

Direct Examination.

(By Mr. GORDON.)

Q. You are Louis or Lewis?

A. I am called Louis, but my name is Lewis.

Q. Mr. Folsom, you made a timber and stone entry in October, 1901, did you not?

A. I think so; I think that was the time.

Q. What is your occupation, Mr. Folsom?

A. At present I am a real estate dealer.

Q. What was your occupation in October, 1901?

A. I am not certain whether I was deputy assessor and tax collector of Ada County, Idaho, or as-

(Testimony of Lewis L. Folsom.)

essor and tax collector.

Q. You were one or the other?

A. Yes, sir.

Q. Your residence is in Boise?

A. Yes, sir.

Q. I show you timber and stone land sworn statement, dated October 30, 1901, and ask you if that is your signature to that paper, and whether or not you filed it in the land office?

A. Yes, sir, that is my signature, and I filed it in the land office.

Q. I show you testimony of Lewis L. Folsom, given on final proof, dated January 22, 1902, and ask you if that is your signature?

A. That is my signature, yes, sir.

Q. I show you deed, dated June 23, 1903, and ask you if that is your signature to that deed?

A. Yes, sir; that is my signature.

Q. Do you remember whether you acknowledged that deed on that date or not?

A. It has been a long time ago; that was six years ago; but it doesn't seem to me that I acknowledged that deed on the 23d day of June. I have serious doubts about it, although I wouldn't be positive.

Q. Where were you on the 23d of June, 1903, if you can remember? Were you in Boise?

A. I couldn't say positively whether I was on that day or not. I think probably I was in Boise during those times, but I don't know about that particular day.

(Testimony of Lewis L. Folsom.)

Q. Did you ever make but the one deed to this land?

A. I never made but the one deed to that land.

Q. Have you ever been asked to make more than the one deed?

A. I never have been asked to make more than the one deed.

Q. You went up and viewed this land, did you?

A. Yes, sir.

Q. Who did you go with?

A. Mr. Edwin Snow, I think.

Q. Where was he from?

A. Maybe it wasn't him; it might have been Henry.

Q. Was it Henry Snow?

A. It may have been Henry.

Q. Wasn't it William F. Snow?

A. Possibly it was. I thought it was another name. I am not trying to deceive you. He acted as a witness, I believe.

Mr. BUNDY.—Q. Was there just you and he?

A. No, Mr. W. W. Abrams went on that trip, too, and Mr. Charles Balantine—I think that was all.

Mr. GORDON.—Q. Who first spoke with you about taking up one of these timber claims?

A. I think it was Mr. Hollister, Mr. Joseph M. Hollister, but I am not certain of that.

Q. Do you remember who spoke to you after that about taking up a claim?

A. I might have talked with a fellow named Nelson.

(Testimony of Lewis L. Folsom.)

Q. Joe Nelson?

A. It may have been Joe; I think they called him Jack.

Q. What did Mr. Nelson tell you about it?

A. He represented that he was working with Mr. Snow and Mr.—

Mr. BUNDY.—I object to what Mr. Jack Nelson said as incompetent, irrelevant, and immaterial, and asking for hearsay evidence with a person not a party to this action.

A. He represented that he was with Mr. Snow and Mr. Downs locating timber claims, cruising for timber claims.

Q. Did he tell you who they were cruising for?

A. No, only that they were getting a certain sum—I don't know just how much now, but I think it was \$25—each for locating; that was the price to locate me on a claim such as I talked to him in regard to, and they told me how much timber there would be on such a claim and made an estimate of the amount.

Q. Was that before you went?

A. This was before I went, yes, sir.

Q. Did they tell you how much it would cost you to acquire the claim?

A. I don't know whether they told me how much it would cost me to acquire title or not, but I think they did.

Q. Did they tell you where you could sell it?

A. No, I don't think they did, although I have been questioned on this before, and my memory is

(Testimony of Lewis L. Folsom.)

that they said that there would be a demand for these claims; I think that was represented, but that has been so long ago that I have really forgotten what they said.

Q. Did they tell you how much you could make out of it?

A. No, I don't believe they told me how much I could make. I think they said others had sold for running from \$600 up to \$1500 or \$1600, depending on the amount of timber.

Q. Did they tell you that they could get you the money with which to buy this property?

A. I don't think they ever mentioned that to me.

Q. And you went up and were located on this land by Patrick Downs or Mr. Snow?

A. I think Mr. Snow went with me and drove right up to the claim, drove over the ground; then he went with me to the corners and I read the corners; I was at the corners of the ground. It was then early winter, and there was some trouble in getting around.

Q. Did he show you one claim that they were going to locate you on?

A. I think they did. I think they showed me—I wouldn't be positive, but I think they showed me three claims, and I selected this one.

Q. Did you select it yourself?

A. Yes, I selected it; I had the option to select it, and did do it.

Q. And did Mr. Snow—did you meet Mr. Downs up there?

(Testimony of Lewis L. Folsom.)

A. Yes, he was living there in that neighborhood somewhere; I didn't go to his house, but I met him there, and he went with us over the claims.

Q. To whom did you pay your location fee?

A. To Mr. Nelson—Mr. Jack Nelson.

Q. When did you pay it—before you went or afterwards?

A. I think I paid that after I made my preliminary filing.

Q. Did you ever pay but the one location fee?

A. That was all—just the one.

Q. Were you ever asked to pay more than one?

A. I don't think so.

Q. Are you positive of that?

A. I am not positive, no; I don't remember that I was asked to pay more than one. I do remember that some of those who took claims had disputes with the locators as to the fee, but I am positive I didn't have such a dispute, so I think I was only asked to pay one fee.

Q. Where did you get the description of this property that you filed on?

A. I think I wrote it out; I think they must have had it before, and I wrote it out from the markings on the corners there, I think I did.

Q. Did the locator give you a description of the property? A. I think he did.

Q. What did you do with that?

A. As I say, I think I checked it with the location there—I had a number of descriptions—then brought it down, and brought it to the land office

(Testimony of Lewis L. Folsom.)

and filled it in on the application; I think I did that myself.

Q. Did the others go with you that were on this trip with you?

A. I am not certain, but I think not.

Q. Did you know Mr. John I. Wells at that time?

A. No, I didn't know him then.

Q. Do you know him now?

A. Yes, I know him now.

Q. When did you first meet him?

A. I think I first got acquainted with Mr. Wells about 1904—I don't know about that—

Q. You didn't know him then until after you had sold this property?

A. I am quite certain I didn't know him until after that. If I did know him I have forgotten it now, and I don't remember having met him at all or knowing anything about him until after that.

Q. Have you ever had any talk with him about this land, or the purchase of this land?

A. I don't remember of ever talking with him more than a little talk I had to-day; I simply joked him, that's all. Nothing serious has ever been said between us.

Q. And you made your final proof?

A. Yes, sir.

Q. Did you go to the land office alone, or did you go with someone?

A. I am not certain who the witnesses were, but I think Mr. Snow, Mr. Balantine were witnesses for me; I think they went with me.

(Testimony of Lewis L. Folsom.)

Q. And did you pay a certain amount of money in the land office? A. Yes, sir.

Q. How much?

A. I think it was \$412.50, but I may be wrong about that.

Q. Did you pay in check or cash?

A. I paid in check.

Q. On what bank?

A. On the Capital State Bank.

Q. Did you have a bank account there at that time? A. Yes, sir.

Q. How long had you had an account at that bank?

A. I really don't know, but probably two or three years, probably about three years.

Q. How long before you drew the check did you put the money in to cover that check?

A. I really don't know. I guess I could get the ledger leaves and show it to you, but I don't know of my own memory.

Q. I mean, was it the day before?

A. I am quite certain it wasn't the day before, although I may have made a loan there; it seems to me I may have borrowed that money at that time—I don't know.

Q. See if you can recollect how long you had had that money in the bank before you drew on it?

A. The full amount, do you mean?

Q. Yes.

A. I think only a short while. Now, as I recall it now, I was at that time, as I recall it now, the

(Testimony of Lewis L. Folsom.)

deputy instead of the assessor and tax collector, because I think I was elected assessor the next year, and, if I remember right, I had, a short time before this, cashed my quarter's salary warrants, amounting to about \$250. I am not certain whether that made enough or not for my filing, but I think it did. I think I had more than the \$450 or so that I spent at that time.

Q. You don't remember then whether you borrowed three or four hundred dollars the day, or the day before, you made final proof?

A. I am not certain now; I might refresh my memory by looking up those bank-books.

Q. Was Mr. John I. Wells up to view this land with you?

A. I don't remember his being there. I don't think he was. At least I don't remember him being there. It seems a long time afterwards before I remember anything about him.

Q. Did Mr. John I. Wells prepare any of your papers that you used in the land office?

A. No, sir.

Q. How much was this land valued at by you when you entered it?

A. I really don't remember, Mr. Gordon.

Q. Didn't you place any value on it?

A. I think one of the questions I answered was as to its value, and I have forgotten what answer I made to that.

Q. How long after you made your final proof did

(Testimony of Lewis L. Folsom.)

someone make you an offer of purchase for this property?

A. I think it was about election time of the next year, which made it 1902, probably October or November, of next year.

Q. Who was it that offered to purchase it?

A. Mr. Pritchard, I think. Mr. Kinkaid and Mr. Pritchard were together about that time, and I think it was Pritchard.

Q. Did he come to see you or did he meet you?

A. I think I met him on the street, but he may have come to my office—I am not sure whether he did the first time or not; he came to my office at other times.

Q. Did he make you an offer at that time?

A. I am not sure that he did; I think he did—I think he made me an offer, but I am not sure of it.

Q. Do you know what he offered you?

A. I think he offered me \$650. I am not sure of that, but I think that was it.

Q. And did you accept that? A. I did not.

Q. How long after that was it that someone spoke with you again about the purchase of this property?

A. I don't remember anyone else having spoken to me about it except those two gentlemen; I think they both talked to me about it, but I think it was soon afterward, my memory is now, that I made a sale, before election, but I wouldn't be positive.

Q. Where did you make the sale of this property—in whose office?

A. In the county assessor's office, I think.

(Testimony of Lewis L. Folsom.)

Q. And to whom did you sell it?

A. Now, really I have forgotten, but I think it was Palmer—that was the name, I think.

Q. You didn't know Mr. Palmer, did you?

A. No, sir.

Q. With whom did you conduct the negotiations?

A. With Mr. Pritchard and Mr. Kinkaid.

Q. That was before the election, as you understand?

A. That is my memory; I have thought of that often, and I don't remember having noticed the date on that deed before, but I am quite certain that when I signed the deed—I notice dates and those things quite carefully, and it doesn't seem to me it was in June, 1903, but it seems to me it was in the fall of 1902. That's the way I feel about it, but I wouldn't want to say positively.

Q. Did one of them pay you the money in the assessor's office there?

A. I think I received a check on one of the banks here for it. I am not sure of that. That's another thing I have been questioned about before, and I couldn't remember then, and I couldn't be sure now.

Q. And did you acknowledge the deed at that time? A. I think so.

Q. Were both of these gentlemen together when you sold this property?

A. I don't remember of ever meeting them both together in connection with this filing.

Q. You acknowledged it before L. M. Pritchard?

A. Yes.

(Testimony of Lewis L. Folsom.)

Q. Well, was he the gentleman who brought the deed for you to sign? A. I think so.

Q. Do you know who prepared the deed?

A. I don't know who prepared the deed. I think he said "I will have it prepared," but I am sure I didn't prepare the deed.

Q. Did you notice that the consideration was \$1000? A. I did.

Q. Did you comment on it?

A. I think I did. In fact I think I hesitated when I saw that consideration for a little while; I wasn't as used to doing business then as I am now, and wasn't so willing to do—

Q. Will you tell me the amount you sold for?

A. I think it was \$700, but I am not sure of that.

Q. That is your best recollection?

A. That is my best recollection to-day, yes, sir.

Mr. KEIGWIN.—Q. Did they pay you \$700 for this land?

A. \$700, whatever the amount was—I don't know whether it was \$700. I didn't think of it; I had nothing to call my attention to it for a long while, but I think, as I remember it now, it was \$700.

Q. Was it \$750?

A. If it was I have been mistaken.

Q. I mean, did they give you the full amount of \$700, or \$750, at one time? A. Yes, sir.

Q. In cash or check?

A. I think by check, and I think it was by Mr. Kinkaid's check.

Q. Did you deposit that check?

(Testimony of Lewis L. Folsom.)

A. I think I did.

Q. To your credit in your own bank?

A. Yes, sir; I think I did. If it was cash I might not have deposited it, and if I am mistaken as to the date this isn't true, but if I am right as to the date, I used that money in paying my campaign assessment. I was then a candidate for collector and assessor, and I think I needed the money and got it in this way.

Q. In 1901, when you made this entry, you were assistant assessor, and were paid a salary?

A. A small salary, yes, sir.

Q. Seventy-five dollars a month?

A. I think \$75; I think it was really \$1000 a year, but I think I drew \$125 each quarter, and drew money at other times.

Q. These payments were made in January, April, July, and October? A. Yes, sir.

Q. And then in the campaign of 1902 you were a candidate for the office of assessor and were elected?

A. Yes, sir.

Q. And you assumed the duties of that office in January, 1903? A. I think so.

Q. You qualified in the January following your election?

A. Yes; let me correct you in one particular—I think I was paid in April, July, October, and January.

Q. As assessor, were you paid a salary or commissions? A. I was paid a salary.

Q. How much was the salary?

(Testimony of Lewis L. Folsom.)

A. \$2000 a year.

Q. How did that come?

A. In quarterly installments. I received \$3000 a year as assessor—I said \$2000, but I was compelled to furnish one deputy that cost me \$1000.

Q. Then the county paid you \$750 every quarter?

A. Yes, sir.

Q. And that came in warrants on the county treasurer?

A. Yes, sir.

Q. And you put those in the bank?

A. I don't think they always went to the bank; sometimes they were purchased by buyers of warrants.

Q. You got the cash?

A. Sometimes.

Q. And put it in your pocket and spent it?

A. I think I put it in the bank. I was then commencing to buy real estate and use my money.

Q. Do you remember a deposit of \$300 that you made on the 26th of July, 1902, in your bank?

A. I don't remember it, no, sir.

Q. I said—1902 is what I intended to say.

A. Yes.

Q. That was while you were still deputy assessor?

A. Yes, sir. It would be about the right time to make a deposit, but I am not sure that I made it then.

Q. Well, if it was deposited on the 26th of July, 1902, you couldn't now, at this distance of time, state where that money came from?

A. I don't believe I could, no, sir. I presume a deposit of that kind would be made from my salary,

(Testimony of Lewis L. Folsom.)

I don't know.

Q. This note you gave to get the purchase money for this land was given to the same bank?

A. If I borrowed that money I gave it to that bank.

Q. And that would be dated a few days before the 25th of July, 1902?

A. I must have made the proof—

Q. I am asking now about this receipt of July, 1902?

A. I don't know.

Q. You think you made your proof in the winter?

A. I think I filed in October or November; it was early winter when I went up to look at the land, and I filed a day or two after that, and it seems to me I made proof sixty days after that; I think it was January or some time—

Mr. BUNDY.—Look at the papers and you can see the date of it. Those are your final proof papers.

The WITNESS.—On the 30th day of October, 1901, I filed, and made the proof January 22d. I had forgotten it, however.

Mr. KEIGWIN.—I don't know anything about this except what I get from you, Mr. Folsom.

The WITNESS.—I am not trying to keep you from knowing, I assure you.

Q. When you made this proof, in January, I understand that your receipt was held up—they didn't give you a receipt at that time.

A. I think they did give me a receipt, or a temporary receipt I think. I am not sure of that.

Q. Do you remember whether you paid the money in January or not?

(Testimony of Lewis L. Folsom.)

A. Yes, I paid the money.

Q. You had to pay the money when you made the proof?

A. I think I got a receipt for it.

Q. You don't remember this deposit of \$300 in July, 1902?

A. No, I don't remember.

Q. Your note for \$400 would be dated some time in January, I suppose. Didn't you say you got this money on a note?

A. I don't remember having said it, but if I did get it on a note it would be dated in January. I may have got it on a note, but I don't believe I did, although I may have got part of it on a note.

Q. I got the idea that you had testified that you gave the Capital State Bank a note for \$400 a few days before you made your proof. This is a statement you made before I don't know whom.

A. I may have given a note; I am not sure about it. If I did give a note, then I have forgotten it.

Q. Well, this statement I have seems to have been made to Mr. Garrett, who was then the receiver of the land office, in March, 1907, and it was perhaps from that that I got the understanding that you got this money on a note.

A. This is my testimony?

Q. Yes.

A. Is it signed? This statement—I remember the time—this was about the time of the investigation by the grand jury. The reason I don't read it is because I remember the occasion, and this was a sort of an interview they had with me before taking me

(Testimony of Lewis L. Folsom.)

before the grand jury, and they finally decided not to take me before the grand jury. Many things were said there at that time, and if you will read it over you will learn a lot about this case.

Q. Your recollection is now that you did not give a note for \$400?

A. That is my memory, but I should add that that is better than my present recollection.

Q. You were going out of town?

A. I would like to go away to-morrow morning.

Q. When will you be back?

A. I will try to be back by the 25th of this month, two weeks from to-day, but I would like to be free to stay a little longer if business is such that I can.

Q. Will you be willing to come here again?

A. Yes, I will come any time; telephone me or have the marshal telephone me, and I will come.

Mr. GORDON.—We offer in evidence the timber and stone sworn statement of Lewis L. Folsom, dated October 30, 1901; his final proof, dated January 22, 1902, and the cross-examination attached; the testimony of the witnesses before the land office on final proof, and the cross-examination; the certificates of the register and receiver, dated July 25, 1902; certified copy of the patent, dated February 1, 1904; and the deed, dated June 23, 1903, by Lewis L. Folsom to A. E. Palmer, consideration \$1,000—I will change the date of the deed, and state that there are evidences of erasure in the deed as to the date—purporting to be dated the 23d day of June, 1903, with evidences of erasure in the date; all to the northeast

(Testimony of Lewis L. Folsom.)

quarter of the northwest quarter of section 18, and the southeast quarter of the northwest quarter, and the east half of the southwest quarter of section 7, township 7 north of range 5 east, Boise Meridian.

(Lewis L. Folsom papers marked Plaintiff's Exhibit No. 59A to 59K inclusive.)

Cross-examination.

(By Mr. BUNDY.)

Q. Mr. Folsom, at the time you made your original application in the land office here at Boise, entered this timber and stone claim, you signed a statement saying, among other things, this: "I have not, directly or indirectly, made any agreement or contract, or in any way or manner, with any person or persons whomsoever, by which the title I may acquire from the Government of the United States may inure in whole or in part to the benefit of any person except myself." That was absolutely true at the time you made it, wasn't it? A. Yes, sir.

Q. And it was absolutely true at the time you made your final proof? A. Yes, sir.

Q. It is alleged, Mr. Folsom, in the complaint in this action we are trying, that you, together with two or three hundred other citizens of this city, entered into an unlawful conspiracy and agreement, having for its purpose the defrauding of the United States out of certain timber lands, and it is alleged that by certain false swearing you and others procured these lands, procured title to these lands, under an agreement by which you obligated yourselves to turn over any land you might acquire from the Government to

(Testimony of Lewis L. Folsom.)

the Barber Lumber Company, or some of the other defendants named, or to such person as they might direct. I ask you in a general way whether that allegation, as far as you are concerned, is true or false. You are charged with being a conspirator here.

A. That is absolutely false.

Q. The allegation of the complaint to which I refer mentions all you entrymen, two or three hundred of them, and it is alleged that you entered into an agreement, unlawful agreement, an unlawful agreement between you entrymen and the Barber Lumber Company and the other defendants named, wherein and whereby they, the Barber Lumber Company and the other defendants, agreed to purchase the lands described in the respective statements, as soon as said applicants secured title thereto. I will ask you, for yourself, is that true or false?

A. The only agreement I entered into to sell it was when I made that deed.

Q. Then the allegation of the complaint that when you made your entry and at the time you made your final proof there was an existing agreement that you would transfer title to anybody is untrue?

A. In my case that is absolutely untrue.

(Witness excused.)

[Testimony of Susie A. Youngkin, on Behalf of the Complainant.]

SUSIE A. YOUNGKIN, produced as a witness on behalf of the complainant, being first duly sworn, testified as follows:

Direct Examination.

(By Mr. GORDON.)

Q. You are Mrs. Susie A. Youngkin?

A. Yes, sir.

Q. And you made a timber and stone filing in September, 1902? A. Yes, sir.

Q. I show you timber and stone land sworn statement, Mrs. Youngkin, dated September 8, 1902, and ask you if that is your signature?

A. Yes, sir.

Q. And you filed that paper in the land office?

A. Yes, sir.

Q. I show you non-mineral affidavit, dated September 8, 1902; is that your signature to that?

A. Yes, sir.

Q. I show you testimony on final proof, dated March 24, 1903. Is that your signature to that?

A. Yes, sir.

Q. And the cross-examination attached. Is that your signature to that? A. Yes, sir.

Q. And is that your signature and that of your husband to deed dated March 28, 1903, made by John A. Youngkin and wife Susie A. to Horace S. Rand? Is that your signature and that of your husband?

A. I guess it is; it must be.

(Testimony of Susie A. Youngkin.)

Q. Who first spoke with you about taking up one of these timber and stone claims?

A. Mr. Youngkin.

Q. What did he say to you?

A. He didn't really say anything to me about taking it up. He came home one day and said he was going to take up a claim, and I asked him if women folks could take timber claims too, and he said he guessed they could. I didn't go when he did, but Mr. Gibberd and he went up first. He said they would see when they came back and then we could.

Q. And you and Mrs. Gibberd went?

A. Yes, sir.

Q. And with whom did you go?

A. With Mr. Youngkin.

Q. Did you know what it would cost to locate you before you went?

A. No, I didn't exactly.

Q. Did you pay your location fee yourself?

A. Mr. Youngkin did.

Q. Where did you go from here?

A. We went to Kempner's ranch; that is, we went to the Half-way House and stayed over night there, and went to the ranch next day.

Q. Who located you?

A. I presume Mr. Downs did; he gave Mr. Youngkin some numbers of some claims and Mr. Youngkin took us over the land.

Q. Mr. Patrick Downs? A. Yes.

Q. Then Mr. Youngkin took you and Mrs. Gibberd over the claims? A. Yes, sir.

(Testimony of Susie A. Youngkin.)

Q. And, as I understand, the description was given to him by Mr. Downs? A. Yes, sir.

Q. And then you returned?

A. I went back to Kempner's ranch and stayed over night there. We were there two nights.

Q. Where did you receive the sworn statement you filed in the land office, the first paper you filed?

A. At the land office, I think; I don't remember going anywhere else.

Q. Do you know who brought it there, or did you go to somebody's office for it?

A. I suppose it was prepared there—I don't know.

Q. Who did you go with to the land office?

A. Mrs. Gibberd and Mr. Youngkin, I think, went with us to the land office.

Q. And do you know how much you paid the first time you went to the land office?

A. I think we paid \$7.50 for filing papers, and we paid our advertising fees.

Q. Did you pay your share or did Mr. Youngkin pay for it? A. He paid for it.

Q. Did Mr. Youngkin give you the money to pay for it?

A. Yes, sir, he did, he was there with me.

Q. Now, did you know a Mr. Kinkaid?

A. No, sir.

Q. Have you ever met a Mr. Kinkaid?

A. I don't know; not to my knowledge, I haven't.

Q. Did you know Mr. Louis M. Pritchard?

A. No, sir.

(Testimony of Susie A. Youngkin.)

Q. And had you met Mr. John I. Wells at that time? A. No, sir.

Q. Do you know Mr. John I. Wells now?

A. I think I would know him now.

Q. Have you met him?

A. I never met him, no.

Q. Did you know Mr. Harry S. Worthman?

A. Yes, sir.

Q. Did you go to his office with relation to any of the transactions concerning this property?

A. We were at his office one time.

Q. Was that after or before you filed?

A. I think it was after we filed, after we proved up, if I remember.

Q. You don't know whether Mr. Worthman prepared that first statement or not?

A. No, I don't I am sure.

Q. And do you remember the occasion of going to the land office to prove up, make your final proof?

A. I remember a little of it. It is hard to remember so much, it is so long ago.

Q. Did you go alone or did someone go with you on that occasion?

A. I don't think there was anyone but my witnesses.

Q. Who were your witnesses?

A. Mrs. Gibberd and Mrs. Martin.

Q. And do you remember how much you paid at the land office that time? A. Yes, sir.

Q. How much?

A. \$412, I think, or \$412.50.

(Testimony of Susie A. Youngkin.)

Q. Did you pay that in cash or in check?

A. In cash.

Q. Did you get the money out of the bank that morning?

A. No, I had part of the money, and I got the balance of Mr. Gibberd.

Q. How much did you get of Mr. Gibberd?

A. In the neighborhood of \$200.

Q. Where did you get the other money?

A. It was my own money that I had worked for, earned myself.

Q. Did you have it in the bank?

A. No, sir, I didn't have it in the bank.

Q. How long had you had this money?

A. Well, I had had some of it quite a while, saved it as I earned it; generally what I earned I had for myself.

Q. Then you had never had any agreement to sell this property at this time? A. No, sir.

Q. And you say you went to Mr. Worthman's office?

A. Yes, we were in Mr. Worthman's office once.

Q. What did you go there for?

A. In regard to signing some papers, I guess, of some kind, I don't remember what.

Q. Where did you sell this property?

A. Well, I don't know. I went to someone's office, but I don't remember whose office it was.

Q. Would you know the name if you heard it?

A. Well, I don't know as I would. I don't remember where the office was, but it seems to me it

(Testimony of Susie A. Youngkin.)

was in the Pierce Building, but I wouldn't be positive.

Q. Was it in the same building that Mr. Worthman's office was in? A. No, sir.

Q. Was there any talk there about selling the land with the gentleman you saw? A. No, sir.

Q. Where did you get the money that was paid? In whose office were you paid the money for this property?

A. I don't know as I know whose office it was; I don't know as I heard at the time—I don't remember.

Q. Did you sign this deed in Mr. Worthman's office?

A. Well, I don't know. I presume I did, but I wouldn't be positive.

Q. Do you know any other papers that you could have signed in Mr. Worthman's office in relation to this property?

A. I don't remember being there but once.

Q. Do you know how much you sold your property for? A. Yes, sir.

Q. How much? A. \$800.

Q. Were you given a check yourself?

A. Yes, sir, a check or draft, or something of that sort.

Q. And did you deposit that in the bank?

A. No, sir, I handed it to my husband, and he got the money at the bank for me.

Q. And did your husband, when he gave you the money with which to make final proof, tell you where he got it? A. No, sir.

(Testimony of Susie A. Youngkin.)

Q. Do you know where he got it?

A. He didn't give me the money; Mr. Gibberd was the one I borrowed it from.

Q. Did Mr. Gibberd tell you where he got it?

A. I guess he got it from the Capital State Bank.

Q. I notice that the consideration in this deed is \$2,500. You didn't get \$2,500; all you got was \$800?

A. Yes, sir.

Q. And did you ever make but the one deed to the property? A. No, sir.

Q. Were you ever requested to make another deed? A. No, sir, I don't think so.

Q. Had you known Mr. Worthman before the occasion that you went to his office with reference to this deed?

A. I had met him a few times with regard to other business.

Q. Are you sure whether or not you got the money for that deed from Mr. Worthman?

A. No, sir, I know I didn't get the money from Mr. Worthman.

Q. Do you know whether you got a check there?

A. No, sir.

Q. You got it from this other gentleman?

A. Yes, sir.

Q. Do you know whether the other gentleman's name was Kinkaid or Pritchard?

A. No, sir, I do not.

Q. Your husband was with you?

A. Yes, sir.

Q. Was anyone else present? A. No, sir.

(Testimony of Susie A. Youngkin.)

Q. The other parties that went on this trip didn't sell the same day you did? A. No, sir.

Mr. GORDON.—We offer in evidence timber and stone land sworn statement of Susie A. Youngkin, dated September 8, 1902; non-mineral affidavit, signed Susia A. Youngkin, dated September 8, 1902; notice of publication, same date; the testimony of the claimant upon final proof, dated March 24, 1903; the cross-examination attached; the certificates of the register and receiver, dated March 24, 1903; and the deed, dated March 28, 1903, made by John A. Youngkin and Susie A., his wife, to Horace S. Rand; and the patent; all to lots 1 and 2, and the south half of the northeast quarter of township 7 north of range 7 east, Boise Meridian.

(Susia A. Youngkin papers marked Plaintiff's Exhibit No. 60A to 60H inclusive.)

Q. I will ask you, Mrs. Youngkin, if you knew Horace S. Rand? A. No, sir.

Cross-examination.

(By Mr. BUNDY.)

Q. Mrs. Youngkin, at the time you filed your first papers in the land office, had you ever had any talk with anybody or anybody have any talk with you about selling this land?

A. No, sir, none whatever.

Q. At the time you made final proof and got final receipt at the land office had you ever had any talk with anybody or anybody talk with you about selling this land? A. No, sir.

Q. It is alleged in this complaint, charged by the

(Testimony of Susie A. Youngkin.)

Government, that you entered this claim under an agreement that just as soon as you got title to it you would turn it over to the Barber Lumber Company, or some of the other defendants, or some other person whom they would direct. Is that complaint true or false as far as it affects you?

A. It is false.

(Witness excused.)

[Testimony of Edward J. Phelps, on Behalf of the Complainant.]

EDWARD J. PHELPS, produced as a witness on behalf of complainant, being first duly sworn, testified as follows:

Direct Examination.

(By Mr. GORDON.)

Q. Your name is Edward J. Phelps?

A. Yes, sir.

Q. How old are you, Mr. Phelps?

A. Almost thirty-one.

Q. What is your occupation?

A. At the present time I am engaged mostly in mining, smelting proposition.

Q. What was your business in March, 1905?

A. Real estate.

Q. Where do you reside, and where did you reside then?

A. In Boise.

Q. How long have you resided in Boise?

A. About twenty-seven years.

Q. You took up a timber and stone claim in March, 1905, I believe?

A. Yes, sir.

Q. I show you timber and stone land sworn state-

(Testimony of Edward J. Phelps.)

ment, dated March 6, 1905, and ask you if that is your signature attached? A. Yes, sir.

Q. Did you file that paper in the land office?

A. Yes, sir.

Q. I show you testimony on final proof, and ask you if that is your signature to that?

A. Yes, sir.

Q. Had you ever taken up a timber and stone claim before this one? A. No, sir.

Q. Had you ever filed on one? A. No, sir.

Q. Who first spoke with you about taking up one of these claims?

A. Well, I think the first talk that I had of any importance about a timber claim was with Mr. Martin, my partner, Thomas L. Martin.

Q. Was he your partner at that time?

A. Yes, sir, the firm was Phelps & Martin.

Q. What Mr. Thomas L. Martin is that?

A. He is a nephew of Frank Martin.

Q. He had been in partnership with Frank Martin, hadn't he?

A. Never had been in partnership; he had been clerk in his office was all. He has a partnership with him now, never had before—was a clerk in his office. He hadn't been in that occupation though for two or three years previous.

Q. Who located you on a timber claim?

A. Mr. Thomas B. Martin, Tom Martin's father.

Q. Was he a timber locator, or what was his business?

A. He has followed a variety of occupations. He

(Testimony of Edward J. Phelps.)

has been a farmer, and employed by the State at different times, and I think was employed by the State as a timber cruiser at one time; he has had experience in that line of work.

Q. Did you pay him for locating you?

A. I paid him a per diem for taking us up there.

Q. Did you go alone, or was there somebody else in the party?

A. Just myself and Mr. Martin.

Q. Do you know what you paid Mr. Martin?

A. Either \$10 or \$15, \$15.

Q. How long did the trip take?

A. We left here on the morning of March 3d, as I remember. We were up there I remember the day Roosevelt was inaugurated; we got to Centerville that night, and went over to the claim the following morning, and returned to Centerville that night, and to Boise the following day, and my entry should have been the 6th, I should judge.

Q. This land was just opened then, was it? You mean it should have been on the 6th of March?

A. Yes, I think that is the time.

Q. I thought you meant the sixth of these locations. Where did you go, what town?

A. We went to Centerville, and went from there over to the claim the following day.

Q. How far was that from Centerville?

A. Somewhere near four miles; three or four miles.

Q. Did Mr. Martin furnish the team?

A. No, I hired the team at the stable here.

Q. Did Mr. Martin take up a claim at that time?

(Testimony of Edward J. Phelps.)

A. No, sir.

Q. Did he have a description of the claim he was going to locate you on before he left Boise?

A. Yes, he knew the section corners.

Q. Well, I mean this particular claim that you got?

A. Yes, he knew the claim; I think he had seen it before.

Q. And you went away from here with the purpose of locating on a claim that Mr. Martin had talked to you about?

A. Yes, Mr. Thomas L. Martin.

Q. What did Mr. Martin tell you about that claim?

A. Well, as I understood, there had been a contest over it, and it had been decided against the contestee, and was open for entry, and was a very fine claim.

Q. Do you know who had originally entered the claim?

A. It was known as the Snow claim, I remember; Mr. Snow had located it; it was a homestead.

Q. Mr. Henry A. Snow?

A. I don't remember his initials.

Q. And it was Mr. Snow's homestead claim?

A. Yes, sir.

Q. And you knew that before you started?

A. Yes, I knew the general conditions.

Q. Did you know the value of that claim?

A. No; I knew it was a good claim, that is, by reputation—I was told it was.

(Testimony of Edward J. Phelps.)

Q. Did you know who owned at that time all the property adjoining this claim? A. No, sir.

Q. Were you told?

A. No, I don't think I was. I knew, of course, that the Barber Lumber Company had holdings in the Basin, held most of the timber up there.

Q. Were you told that this claim was right adjoining the Barber claims, and that they desired that particular piece of property for a particular purpose? A. No, sir.

Q. Did Mr. Martin tell you how many feet of timber was on that claim, how much it would cruise?

A. I think we conversed about that after going over the claim, and I figured the claim ought to run somewhere about a million and a half.

Q. Was this claim on the river?

A. It sloped right down to a branch of Grimes creek.

Q. Was there any property between that and the creek? I mean, did this land go right down to the creek?

A. I think it did; it seems to me we crossed a creek right there on one of the corners. I wouldn't be positive about that.

Q. And you went over the corners?

A. Yes, sir.

Q. And then returned to Boise?

A. Yes, sir.

Q. And who prepared this sworn statement?

A. I think I prepared those myself, although Mr. Thomas L. Martin might have prepared them. We

(Testimony of Edward J. Phelps.)

were both conversant with papers of that sort.

Q. And you filed them in the land office then?

A. Yes, sir.

Q. And then, in due course, you made final proof?

A. Yes, sir.

Q. Now, before you made final proof, did anyone make you an offer of purchase? A. No, sir.

Q. Did you know at that time to whom you could sell it?

A. I knew the parties that were purchasing in the Basin, but I hadn't made up my mind at that time exactly what I would do with the claim; I had some idea of holding it.

Q. Until the price got higher than what they were giving? A. Yes, sir.

Q. Did you think that eventually you would sell to the Barber Lumber Company?

A. Not to them in particular, no.

Q. Was anybody else purchasing land there but the Barber Lumber Company from claimants?

A. I think there probably were some private parties.

Q. Right in that location?

A. In various portions of the Basin; I don't know whether in that particular locality.

Q. Do you know of any person that bought in that country but the Barber Lumber Company, or some of its agents?

Mr. BUNDY.—I object to that.

A. I don't know its agents. Mr. Frank Martin bought one or two claims there.

(Testimony of Edward J. Phelps.)

Q. And he sold to the Barber Lumber Company those two claims? A. I don't know.

Q. Did you ever sell anything to Mr. Frank Martin? A. No, sir.

Q. Did you ever join in a deed conveying property to Mr. Frank Martin? A. Yes, sir.

Q. Where was that?

A. That was my wife's.

Q. Do you know whether Mr. Martin then sold it to the Barber Lumber Company?

A. I do not; he told me he expected to hold it.

Q. How much did you think this land was worth when you purchased it?

A. Well, that's a pretty hard question to answer. I knew the claims were selling all the way from \$700 up to \$1,500; at least I heard that.

Q. Now, you went to the land office, and made your final proof? A. Yes, sir.

Q. How much did you pay at the land office on that occasion?

A. Something over \$400—I don't remember—

Q. And did you pay by check or in cash?

A. In gold, as I remember.

Q. Did you borrow that money, or did you have it of your own? A. I had it of my own.

Q. Did you have it in the bank, or in your possession?

A. I think the most of it was in the Capital State Bank.

Q. Do you remember when you drew it out of the bank? A. The morning I made final proof.

(Testimony of Edward J. Phelps.)

Q. You checked it out, did you?

A. I think so.

Q. And do you know how long you had had it in the bank?

A. Oh, a man in business might have two or three thousand one day, and five hundred in there the next, and an overdraft the next.

Q. I meant, did you borrow the money to put in the bank? A. No.

Q. It was your own money?

A. In fact, I had enough money then to have bought a dozen timber claims if I had wanted to.

Q. You have sold this property, have you?

A. Yes, sir.

Q. To whom did you sell it?

A. Barber Lumber Company.

Q. With whom did you negotiate the sale?

A. Why, Thomas L. Martin negotiated the sale for me. We had had a deal on with the Barber Lumber Company, or at least tried to sell insurance on the plant up there, and Mr. Martin handled that end of it with Mr. Chapman, and I let him handle that business on this account, and he handled it and sold it.

Q. Was the price fixed by Mr. Martin and Mr. Chapman?

A. Yes, he was up there and asked what they would pay for the claim, and they finally made an offer, as I remember of \$1300; I believe that was what I was paid for it.

Q. Was that paid in check? A. I think so.

(Testimony of Edward J. Phelps.)

Q. And to whom did you make the deed?

A. To the Barber Lumber Company.

Q. Did you prepare the deed yourself?

A. I wouldn't be certain of that, Mr. Gordon; it might have been myself or Thomas L. We were both competent to make other deeds.

Q. How long was that after you made your proof? I haven't the deed; I haven't seen it, I don't know where it is.

A. That question I can't answer.

Mr. BUNDY.—I can tell you, for your information. Final proof was made May 13, 1905, and it was sold July 28, 1905, two months and fifteen days after.

Mr. GORDON.—Q. Do you remember before whom you acknowledged the deed?

A. No, I don't. There are two or three notaries there that we might have gone to. I don't think Mr. Thomas L. Martin had a notary's commission. I think probably I acknowledged it before Mr. Dunton.

Mr. GORDON.—We offer in evidence timber and stone sworn statement of Edward J. Phelps, dated March 6, 1905; his testimony on final proof, dated May 13, 1905; the cross-examination attached; the notice of publication; the register's and receiver's certificates, dated May 15, 1905; and the patent. We will try to find the deed or account for it. The description of the land is, south half of the southeast quarter, and the northeast quarter of the southeast quarter, and the southeast quarter of the northeast

(Testimony of Edward J. Phelps.)

quarter of section 17, in township 7 north of range 5 east, Boise Meridian.

(Edward J. Phelps papers marked Plaintiff's Exhibit No. 61A to 61M inclusive.)

Cross-examination.

(By Mr. BUNDY.)

Q. Mr. Phelps, did you make your stone and timber entry for the benefit of the Barber Lumber Company? A. No, sir.

Q. Did you make it for the benefit of anybody else? A. Only myself.

Q. At the time you made your original filing, and at the time you made your final proof, or at either of such times, had you any agreement, express or implied, verbal or written, with the Barber Lumber Company, or any other person, to the effect that you were to turn over or transfer the title you might acquire from the Government over to the defendants, or to any person they might name?

A. No, sir.

Q. It is charged in the complaint here that you conspired with the Barber Lumber Company and the other defendants to defraud the United States out of this land embraced in your timber and stone entry, under an agreement that you were to turn it over to them as soon as you got title. Is that true or false, as far as it affects you? A. It is false.

(Witness excused.)

[Testimony of Charley Patterson, on Behalf of the Complainant.]

CHARLEY PATTERSON, produced as a witness on behalf of the complainant, being first duly sworn, testified as follows:

Direct Examination.

(By Mr. GORDON.)

Q. Your name is Charley Patterson?

A. Yes, sir.

Q. How long have you lived in Boise, Mr. Patterson?

A. Seventeen years.

Q. What is your occupation?

A. Clerk.

Q. Where?

A. Eastman-Teller Hardware Company.

Q. How long have you been employed there?

A. I have been in the same place, in the same store, for about nine or ten years. It has changed hands though.

Q. You were employed in that business in 1902?

A. Yes, sir.

Q. You made a timber and stone filing in March, 1902, did you?

A. Yes, sir.

Q. I show you timber and stone land sworn statement, dated March 28, 1902, and ask you if that is your signature to it?

A. Yes, sir.

Q. And you filed that paper in the land office?

A. Yes, sir.

Q. I show you testimony you gave before the land office on your final proof, dated June 24, 1902, and ask you if that is your signature there?

(Testimony of Charley Patterson.)

A. Yes, sir.

Q. I show you deed, dated 27th of March, 1903, between Charley Patterson, and wife, Mary Patterson, to A. E. Palmer. Is that your signature?

A. Yes, sir.

Q. And that is the signature of your wife?

A. Yes, sir.

Q. And you both acknowledged that deed before Mr. L. M. Pritchard?

A. Yes, sir.

Q. Did your wife take up a claim under the timber and stone act? A. No, sir.

Q. Who first spoke with you about taking up a claim?

A. There was a young man by the name of French that worked at this same place, and he took up a claim, and that was the first I heard of it; then I didn't hear anything more about it for, it must have been six or eight months.

Q. Who spoke with you then?

A. Well, I heard—I don't know in particular who, but Butler was one.

Q. Edward Butler?

A. Yes, sir, and he was going up there, and he wanted to know if I didn't want to go.

Q. Did you go with the party? A. Yes, sir.

Q. Who were of the party?

A. Ed Butler, and a man by the name of Barker, and another gentleman—I don't know who he was.

Q. And who arranged for that party to go? Who got the party together?

(Testimony of Charley Patterson.)

A. I don't know whether Butler came to me or I went to him. We went together to see about the team, I think. First, I went up to the land office to see how much it was going to cost me.

Q. Did you know Mr. John I. Wells at that time?

A. No, sir.

Q. When did you meet Mr. Wells?

A. I went up to his office to see if he could locate me.

Q. Was that before you started?

A. Yes, sir.

Q. And did you make arrangements with him for locating you?

A. Not the first time up there; he said that he didn't have nothing, couldn't locate me then, and he told me what day to come back, and I went back up and he says "Four of you will go next day." He located four of us the next day.

Q. And he told you what it would cost?

A. He told me how much it would cost to locate.

Q. Did he tell you who would meet you up there?

A. No, sir, he said there was a man up there.

Q. Did Mr. Wells locate you, or someone else?

A. Patrick Downs.

Q. What town or city did you go to?

A. Idaho City.

Q. At that time did you have to have the money with which you could pay for this land?

A. I don't know whether I had all the money it would take or not; I had some money, and I had some property.

(Testimony of Charley Patterson.)

Q. Were you told that you could get this land, and that the money would be furnished you to pay for this land? A. No, sir.

Q. You didn't say anything to Wells about that, or he to you?

A. No, sir, didn't say anything at all about that.

Q. That was the first time you met Wells, was it?

A. The first time I spoke to the man.

Q. Then you went up there and met Mr. Downs?

A. Yes, sir.

Q. And he located all of you on a separate piece of land? A. Yes, sir.

Q. And did he give you a description of it there?

A. I think that he did; I am not positive.

Q. Did he tell you where to go to have your papers made out?

A. I think he said "Take them to Wells." I am not positive, but that's where we went.

Q. And did you pay him for locating you or did you pay Wells?

A. I think we paid Wells; I am not positive about that.

Q. This timber, did he show you more than three claims, or did he give you your pick of a number of claims, or did he take you out to one claim and say "This is yours"?

A. We all was together until the last claim, and he said my land was over further from the others, and Downs and I went over to what he said was to be mine, and he showed me the corners, and the others waited until we got back.

(Testimony of Charley Patterson.)

Q. How far was yours from the others?

A. Just a little ways, right across the hill. It wasn't very far.

Q. Did you go to Mr. Wells' office the same day you returned, or the next day?

A. It was the next day.

Q. That is the John I. Wells that you spoke of?

A. Yes, sir.

Q. And he drew these papers for you?

A. They were drawn in his office.

Q. He gave them to you? A. Yes, sir.

Q. Did you carry the description back to him, or did he have it?

A. I couldn't say; I am not positive.

Q. And all of you went there together, these people that were of the party?

A. Butler and I went there together, but I couldn't say as to whether the others was with us or not.

Q. Butler got his papers there too at that time?

A. Yes, sir.

Q. Did you pay Mr. Wells the locating fee, or Mr. Downs?

A. I paid Wells, I think.

Q. Did Mr. Wells go to the land office with you?

A. No, sir.

Q. Are you sure of that?

A. I don't think he did.

Q. The reason I ask you is that I am reading I. Wells introduced you to the register of the land from a certificate here in which you said that John

(Testimony of Charley Patterson.)

office.

A. He might have, but I don't know of it.

Mr. KEIGWIN.—Q. Did you know Mr. James King, register of the land office? A. No, sir.

Q. You had to have somebody to introduce you there, to identify you.

A. I don't know; I know Mr. Hemrod.

Mr. GORDON.—Q. This is the way the certificate reads: "I hereby certify that the foregoing affidavit was read to affiant in my presence before he signed his name thereto; that said affiant is to me personally known (or has been satisfactorily identified before me by John I. Wells)."

A. Was that the one at the land office?

Q. Yes.

A. The reason I ask, it runs in my mind that there was some gentleman at Wells' office when I got the papers, but Wells might have been up there; that paper shows—he might have been, but I don't recollect.

Q. Now, you paid your location fee yourself there? A. Yes, sir.

Q. I mean your filing fee. A. Yes, sir.

Q. And your advertising fee?

A. Yes, sir.

Q. Was Mr. Wells up to go over the land with you? A. No, sir.

Q. Up to this time was any offer made to you for the purchase of this land? A. No, sir.

Q. I will ask you what your salary a month was at that time.

(Testimony of Charley Patterson.)

A. I couldn't say—it was somewhere between \$50 and \$80. I started in there at \$50.

Q. And had you met Mr. Kinkaid at that time?

A. No, sir.

Q. Mr. Pritchard? A. No, sir.

Q. Then it came time to make your final proof, and do you remember the occasion of going to the land office to make that? A. Yes, sir.

Q. And do you remember how much you paid into the land office on that occasion?

A. Something like \$400—four hundred and something.

Q. And did you pay it in cash or by check?

A. Paid it in cash.

Q. Did you draw the money out of the bank that day, or did you borrow it, or how did you get it?

A. I went to the firm and told them I wanted—I had part of the money—and I told them I wanted—I think it was—\$200 or \$250, and they gave me a check on the Capital State Bank, and I went there and cashed it.

Q. Did you give the company a note for that?

A. No, sir, I had no regular pay-day, and whenever I wanted any money I went and called for it.

Q. Who was this that you were working for at that time? A. Fletcher & Steen.

Q. They gave you, as you remember, how much?

A. Something like \$200; I think it was \$200. It might have been \$150 or \$250.

Q. How long after you made your final proof did you sell this property?

(Testimony of Charley Patterson.)

A. Well, it was quite awhile. I think my final receipt was held up some way or other, and I didn't get it, for I don't know how long, but I know there was something that I didn't get final receipt for it seems to me like it was several months.

Q. How long after you got final receipt did someone offer to buy this?

A. It wasn't very long, not more than a day or so.

Q. Who offered to buy it?

A. I couldn't say; it was Kinkaid or someone in his office.

Q. You knew Kinkaid, did you?

A. No, sir, I didn't know him.

Q. How did you happen to go to Kinkaid's office?

A. John Wells—

Q. And what did John say to you?

A. He said, "Go up to Kinkaid's office."

Q. What for?

A. I was looking for a buyer.

Q. Had you tried to sell to Mr. Wells?

A. No, sir.

Q. You asked him if he knew of anybody that would buy it?

A. Yes, sir.

Q. And he directed you to Kinkaid?

A. Yes, sir.

Q. And you went there?

A. Yes, sir.

Q. Did you go to Wells' office to ask him if he knew of somebody you could sell it to?

A. Yes, sir, I went to his office.

Q. And you went to Kinkaid's office?

(Testimony of Charley Patterson.)

A. Yes, sir.

Q. And what did he offer you for it?

A. Something like \$700.

Q. And did you sell it that day?

A. Yes, sir.

Q. And he paid you?

A. Well, I don't know whether he paid me all then or not. I know my wife wasn't here at the time to sign the deed, and they didn't want to pay me all of it then, but I think they did.

Q. How much did they pay you the first time—do you remember? A. No, sir, I do not.

Q. Did you ever sign but the one deed?

A. Not that I know of.

Q. Didn't you sign a deed before you got your final papers, and then went back and they asked you to sign another one?

A. I don't recollect anything of that kind.

Q. Your best recollection of it is that you signed a deed the one time you went there and never signed another deed to this property?

A. Yes, sir.

Q. Did you go there when your wife went to make this deed, or did they come to your house?

A. I took Mr. Pritchard out to the house in a buggy. My wife was out of town, and when she came back her health was poor.

Q. How long after you signed the deed did your wife return?

A. I think it was about two weeks, or three, something like that.

(Testimony of Charley Patterson.)

Q. The day you signed the deed did you acknowledge it before Mr. Pritchard?

A. I think I did.

Q. Did you go out of Mr. Kinkaid's office to Mr. Pritchard's office?

A. No, sir, I was in Pritchard's office; I wasn't in Kinkaid's office.

Q. Was this deed prepared when you went there?

A. I don't think so. I know I was there quite awhile; I know I was there until after dark—I remember that.

Q. And then several weeks later your wife came home and you took Mr. Pritchard out there and she signed and acknowledged the deed before him?

A. Yes, sir.

Q. Have you made any statement before relating to those transactions to the attorneys or any of the agents of the Government?

A. No, sir.

Q. Have you been asked to?

A. Well, a gentleman downstairs, about four o'clock, told me to come upstairs, and I told him it was too late.

Q. Have you talked with either of counsel for the defense about this case at all?

A. No, sir.

Q. With Mr. Wells?

A. No, sir.

Q. Have you talked to anybody?

A. No, sir.

Q. Any of the witnesses or anybody else?

A. No, sir.

Mr. GORDON.—We offer in evidence the sworn

(Testimony of Charley Patterson.)

statement of Mr. Charley Patterson, dated March 28, 1902; his testimony on final proof, dated June 24, 1902; the cross-examination thereto; the testimony of the other witnesses on final proof; the non-mineral affidavit, dated March 28, 1902; the notice of publication, dated March 28, 1902; the register's and receiver's certificates, dated June 24, 1902; and the deed, signed by Charley Patterson, and wife, Mary Patterson, to A. E. Palmer, consideration \$1000, dated March 27, 1903; and the patent, to the northwest quarter of section 33, township 6 north of range 6 east, Boise Meridian.

(Charley Patterson papers marked Plaintiff's Exhibit No. 62A to 62L inclusive.)

Q. I will ask you if you knew Mr. A. E. Palmer.

A. No, sir, I did not.

Q. Did you read the deed and see that Mr. Palmer's name was in there at that time, or did you sign it in blank?

A. I think I read it.

Q. Did you note that the consideration was \$1000?

A. Yes, sir, I knowed at the time that it was more than what I was getting for it.

Mr. KEIGWIN.—Q. You got \$650?

A. \$650 or \$700.

Cross-examination.

(By Mr. BUNDY.)

Q. Mr. Patterson, prior to the time you made your first application to buy this timber, had you any agreement, express or implied, in writing or

(Testimony of Charley Patterson.)

verbal, with anybody, to the effect that you were to turn the title over as soon as you acquired it to them?

A. No, sir.

Q. Did you have any such agreement at the time you made your final proof?

A. No, sir.

Q. You are charged in the complaint in this action we are trying, Mr. Patterson, with having entered into a conspiracy with the Barber Lumber Company and a lot of other people to defraud the United States out of this land, and it is claimed in there that you entered into an agreement with them by which you agreed, as soon as you got title, to transfer it to them, or to some person that they might select. Is that complaint, as far as it relates to you true or false?

A. It is false.

(Witness excused.)

At this time an adjournment was taken until ten o'clock A. M., Friday, February 12, 1909, at which time court met, pursuant to adjournment, the Examiner and counsel for the respective parties being present.

Stipulation.

It is hereby stipulated by and between the parties, in open court, that the taking of testimony may proceed today, February 12th, and that the same may be used on the trial with the same force and effect as though taken on any other date, hereby waiving any legal objection due to the fact that this is or may be declared a legal holiday.

[**Testimony of Harry K. Eagleson, on Behalf of the Complainant.**]

HARRY K. EAGLESON, produced as a witness on behalf of the complainant, being first duly sworn, testified as follows:

Direct Examination.

(By Mr. GORDON.)

The EXAMINER.—The witnesses who are not being examined are requested to retire to the hall until they are called.

Mr. BUNDY.—Let it be noted that this is all against the objection of the defendants.

Mr. KEIGWIN.—Do we understand that the defendants desire to have all the witnesses in the room at the time the examination is in progress?

Mr. BUNDY.—The defendants simply object to the apparent insult to all the witnesses. It is a gratuitous insult, and unprecedented, unusual. I don't want it to appear that it is done by any procurement of ours.

Mr. GORDON.—Q. You are Mr. Harry K. Eagleson? A. Yes, sir.

Q. And you took up a timber and stone claim in 1902? A. Yes, sir.

Q. Now state all there is, Mr. Eagleson, in connection with your taking up the timber and stone claim, and the persons who went with you to take up a claim at that time.

A. Mr. Sensenig, his wife, my wife, my mother in law—

(Testimony of Harry K. Eagleson.)

Q. Your mother in law was who?

A. Mrs. Caroline Alexander—my brother Charles Eagleson, my cousin Clyde Eagleson, and his wife, J. V. Nusbaum, and his wife—Mr. Nusbaum is dead. I went to Mr. John I. Wells several times to get located. I knew there was timber being taken up up there. I presume I went to Mr. Wells at least four or five times before he gave me a letter to Mr. Downs, and we got rigs and went up, and stayed at the Kempner ranch, and Mr. Downs located us all.

Q. And who did you pay the locating fee to?

A. I paid Mr. Wells after I returned.

Q. Did the rest of the party pay Mr. Wells too, that you know of?

A. I think so; I paid him for my claim, and my wife's, and mother in law's.

Q. Your sworn statement is dated September 19, 1902; I will ask you if that is your signature.

A. Yes, sir.

Q. And that is your signature to the non-mineral affidavit of the same date?

A. Yes, sir.

Q. And that is your signature to the testimony given on final proof, dated January 29, 1903?

A. Yes, sir.

Q. And that is your signature and that of your wife to the deed dated February 16, 1903?

A. Yes, sir.

Q. Did Mr. Downs give you the description of the property there, or did you get that when you returned?

A. I took the description myself from the corners

(Testimony of Harry K. Eagleson.)

for the whole party.

Q. What did you do with them; did you give them to them, or did you have somebody prepare the papers?

A. Well, I presume Mr. Kinkaid prepared those deeds.

Q. The first papers, I intended to say.

A. I thought some of our party prepared those papers that we filed on in the land office; I had thought I did myself—that is my writing all right.

Q. Do you remember giving the individual members of your party a description, or did you take the descriptions to one person and have them prepared?

A. No, I gave each one—I had a little vest pocket-book like this that I took down all the numbers of the land in, and Mr. Downs he sent those numbers down to Wells, and they were handed to us again, I think, when we paid that location fee. I checked over those numbers by my book.

Mr. GORDON.—I didn't catch that quite. Read that, Mr. Stenographer. (Answer read.)

Q. Do you know whether or not Mr. Wells handed the original filing paper, the sworn statement, to each of you at the time you filed?

A. I don't think Wells was at the land office.

Q. I mean at his office when you made that payment.

A. I think he just gave us the numbers of that land, because I know I checked them by my book to be sure it was right; I checked all those numbers by my book before the members of the party took them.

(Testimony of Harry K. Eagleson.)

I don't think he made out any papers; I don't remember that he ever made out any papers for us at all.

Q. My question wasn't whether Mr. Wells made them out himself; whether he had somebody make them out. A. I don't think so.

Mr. BUNDY.—Now, I want to say to you that I spoke to one of your witnesses, Mr. Dennis Thornton. I asked Mr. Thornton to go up town after Mr. Fraser. Mr. Thornton is an employe of the company I represent, so I took the liberty of asking him.

Mr. GORDON.—Q. Mr. Eagleson, do you know who prepared the non-mineral affidavit for you (hands witness paper)?

A. That looks like Ed Garrett's writing to me. I believe that is his writing.

Mr. KEIGWIN.—Q. Who is Ed Garrett?

A. He was receiver. That isn't his writing, though.

Mr. GORDON.—Q. You don't know whose writing it is? A. No, sir.

Q. I show you notice of publication, and ask you if you know who prepared that for you (hands witness paper)?

A. I do not.

Q. You filed this sworn statement in the land office? A. Yes, sir.

Q. And you made final proof?

A. Yes, sir.

Q. Now, do you remember how you made that final proof, how you paid the money you paid in the

(Testimony of Harry K. Eagleson.)

land office at the time you made your proof, whether it was in check or cash?

A. I paid it in money.

Q. Did you prove up with the rest of your party, or did you prove up alone?

A. I think probably there was two or three that day; we didn't all prove up that day. I think there was three different days that different ones in our party proved up.

Q. Do you mind stating where you got that money with which to make your final proof?

A. I think I borrowed the most of it; I don't know how much I borrowed—I borrowed some.

Q. Have you an idea how much you borrowed?

A. No, I couldn't say.

Q. Where did you borrow it?

A. I think I borrowed \$1000—I am not sure—at the Capital State Bank.

Q. When did you borrow it—the day you made your final proof, or before?

A. Before we proved up, but just how long I couldn't say.

Q. And you borrowed it on your own note?

A. Yes, sir.

Q. Now, it seems that you didn't prove up until ten days after the date you had advertised that you would prove up, and then you made an affidavit in the land office. I show you the affidavit and ask you if that is your signature to the affidavit filed in the land office, dated January 29, 1903?

A. Yes, sir.

(Testimony of Harry K. Eagleson.)

Q. How long after you made your final proof did you sell this land?

A. I couldn't say—I don't remember.

Q. Well, as near as you can remember.

A. Refreshing my memory from those papers—about two weeks.

Q. The deed is dated February 16, 1903, and you made your proof on the 29th of January, 1903.

A. Yes, sir.

Q. Did you sell the day that this deed was made?

A. No, I sold, I think it was a day before, or two days before. I sold all the claims that we had in that party at one time.

Q. And how many were there?

A. Well, let's see; I will have to figure a little.

Q. I mean, as near as you can remember.

A. I think it was thirteen, but I might possibly be mistaken about that.

Q. And who did you negotiate the sale with?

A. John Kinkaid. This party that went up there was thirteen people.

Q. And had they put it in your charge to sell these claims? A. Yes, sir.

Q. And was that arrangement made with the parties—I mean between you and the rest of the party before you located?

A. No, we didn't know that we would get timber. Now, I kind of run a little shinnanigan with Wells on that deal. Wells, he thought it was myself and wife and mother in law. Then I notified these friends of mine and we all went up on the same letter.

(Testimony of Harry K. Eagleson.)

We didn't all know we was going to get timber. My wife didn't intend to take a claim at that time. My boy was a small baby, and she went along for the outing. We had no arrangements made at all at the time we went up there to locate.

Q. I mean, when was the authority given you that you could sell the timber, or when did you have an agreement among yourselves that you would all sell it in a lump?

A. After we had taken those claims, we all agreed not to sell it unless it was sold in a bunch.

Q. Were there any parties up there that you met while there that you formed that agreement with?

A. Oh, no; we never had an agreement with anybody till I made that deal.

Q. You don't understand me. I don't mean that you made an agreement to sell to any particular person; but where was the agreement made among your party that if you did sell you would all sell in a bunch?

A. I don't know. A good many of those things are pretty vague at this distance. I think probably that agreement was made after we proved up. That was done really at my own suggestion; I suggested that.

Q. You met some people up there when you went to prove up that didn't go with your party?

A. They were located; some of those people were located. Mrs. Schmelzel, I think, was located the same day my wife was, and the other ladies in our party.

(Testimony of Harry K. Eagleson.)

Q. And did they come into the pool? Did you sell their property at the same time?

A. Yes, sir.

Q. Now, you used an expression here that I don't know whether it is clear to me what was meant, and it may not be to the court, that you used a little shinnannigan on Wells, and you say his idea was, or you gave the impression that you and your wife and mother in law were only going to take up claims, and that you took up other parties on that letter. Didn't you understand that Mr. Wells wanted to locate all he could?

A. He kept putting me off on the ground that there was too many applicants; that they didn't have timber enough.

Q. But when you arrived there with your party they did have timber enough to locate all of them?

A. Yes, sir.

Q. You don't think he had any motive in not wanting you or your party to take this timber up, do you?

A. No, I don't think so.

Q. He has never said anything about it, has he?

A. No, sir.

Q. Your wife went along with you, and you paid all her expenses? A. Yes, sir.

Q. And did you furnish her the money with which she made her proof and entrance fee?

A. I think the big end of her money was her own. Of course I borrowed the money out of the bank, but I think it was her money. I used what little money

(Testimony of Harry K. Eagleson.)

she had after I married her.

Q. This immediate money, though, that she used to prove up? A. I borrowed that.

Q. And gave it to her the day she made her proof?

A. Yes, sir.

Q. You and she proved up out of the thousand dollars that you borrowed?

A. Yes, sir, and I think that same thing would hold true of my mother in law.

Q. And you borrowed that for her too?

A. I think I had a little money in the bank; I don't know how much. I don't know how much I borrowed.

Q. And you made all the arrangements for your wife to locate, and for the sale of her property, the same as you did your own?? A. Yes, sir.

Q. Do you know whether the same person that prepared all of your papers prepared hers?

A. I couldn't say. I don't remember. I had thought I prepared all those papers myself, until I was shown the papers.

Q. Mr. Eagleson, what was your business in 1902?

A. I was in the ice business, and ranching.

Q. And you resided in Boise at that time, and had for some time prior thereto?

A. Yes, sir.

Q. I notice in your statement here, filed in the land office, you made the statement that "I am in the ice business, Electric Ice Company, compensation \$75 per month." Was that correct then?

A. Yes, sir.

(Testimony of Harry K. Eagleson.)

Q. And how long did you remain in that employment?

A. But I can explain that. I owned that ice company at that time, but it wasn't in my name; it was in my brother's name.

Q. Do you know who prepared this deed that you have identified here, as being signed by yourself and wife?

A. I think Mr. Kinkaid did; it was prepared in his office, I think. I sold the claims to him.

Q. That was John Kinkaid?

A. Yes, sir, I sold the claims to him, and we signed the papers a day or two days after we made the same, and he took down the numbers, and I checked the numbers off of that book again, and those deeds were made out again when we signed up.

Q. And you read the deed? A. Yes, sir.

Q. And how much money did you get for your two claims? A. We got \$850 apiece.

Q. You are sure it was \$850, or \$800?

A. It was \$850.

Q. I notice the consideration in the deed was \$1600. A. Yes, sir.

Q. You noticed that then, \$1600?

A. Yes, sir.

Q. And you knew at that time that you were making a deed to Horace S. Rand? A. Yes, sir.

Q. Did you know before that time that Mr. Kinkaid was purchasing property for somebody else?

A. Well, I don't know that I did. I don't believe I did.

(Testimony of Harry K. Eagleson.)

Q. Was there any comment about it at the time the deeds were made, the sale was made?

A. I think not. If I am not mistaken, all those deeds were signed the same day, excepting Mrs. Schmelzel, and Mrs. Schmelzel only got \$800 for her claim.

Q. Where was Mr. Schmelzel at that time, do you know?

A. I think he had charge of the power plant over on Horse Shoe Bend.

Q. That was fifteen or twenty miles?

A. It might have been before he moved over there; I don't know just when that transfer was made, but that was his business. It might have been while he was here.

Q. And these were all acknowledged before Louis M. Pritchard?

A. Yes, sir, he took the acknowledgment there when we signed the papers.

Q. Was it your duty to get all these deeds signed for Mr. Pritchard?

A. No, we paid him for that acknowledgment.

Q. I mean Mr. Kinkaid.

A. I didn't understand the question, I guess.

Q. I mean, as you were acting for the other parties, was it incumbent upon you to see that the other parties signed those deeds?

A. All the agreement we had was by word of mouth. He wouldn't pay anything on the claims until the deeds were made out; there was no money changed hands until the deed was signed, and as each

(Testimony of Harry K. Eagleson.)

one signed the papers they received their check.

Q. Where was the acknowledgment of Mrs. Schmelzel taken?

A. I don't know; her claim wasn't taken at that time. I don't believe she was here, or something, although her claim should have gone in on that sale, but it didn't.

Q. Do you know whether Mr. Kinkaid paid you by check or cash? A. Check.

Q. Did you deposit the check?

A. I presume I did.

Q. Where were you doing your banking at that time? A. Capital State Bank.

Q. Do you know whether it was Kinkaid's personal check or somebody else's check?

A. It was his personal check on the First National Bank.

Mr. GORDON.—We offer in evidence the timber and stone land sworn statement of Mr. Eagleson, dated September 19, 1902; the non-mineral affidavit of Mr. Eagleson of the same date; his final proof papers, dated January 29, 1903; and the affidavit of Mr. Eagleson filed in the land office, dated January 29, 1903; the cross-examination attached to the proof; the notice of publication, dated September 19, 1901; the register's and receiver's certificates, dated January 29, 1903; the patent; and the deed, dated February 16, 1903, made by Harry K. Eagleson and wife, Helen E., to Horace S. Rand, consideration \$1600, all to the south half of the northeast quarter, and the south half of the northwest quarter

(Testimony of Harry K. Eagleson.)

of section 25, township 7 north of range 8 east, Boise Meridian. This deed also contains the property of Helen E. Eagleson, the south half of the northwest quarter of section 23, and the south half of the northeast quarter of section 22, all in township 7 north of range 8 east, Boise Meridian.

(Harry K. Eagleson papers marked Plaintiff's Exhibit No. 63A to 63O inclusive.)

Mr. KEIGWIN.—We desire, Mr. Examiner, to have it noted on the record that Mr. John I. Wells has entered the room at ten minutes to eleven o'clock, during the examination of Mr. Eagleson.

Cross-examination.

(By Mr. BUNDY.)

Q. Mr. Eagleson, I have been waiting to get some one that is acquainted here with most of these people and can give us a little general information as to the people who are named in this complaint, and who are charged in the complaint with having wilfully perjured themselves at the instance of the Barber Lumber Company and the other defendants, pursuant to an agreement by which they were to assist the Barber Lumber Company in defrauding the Government, and under which arrangement it was understood that they would get the lands, and as soon as they got title they would transfer them to the defendants, or some of them. Before calling your attention to the names, I will ask you whether or not that allegation of the complaint, as far as you are concerned, is true or false?

A. It is absolutely false.

(Testimony of Harry K. Eagleson.)

Q. If you will kindly look over the names of the people who are charged with being parties to this unlawful agreement and with having perjured themselves, will you look through there and see those names (hands witness paper) ?

Mr. BUNDY.—I wish you would kindly note on the record that some stranger, unknown to the case, is in the courtroom at five minutes to eleven, conversing with John I. Wells, and that the same stranger has been seen at divers and sundry times about the courtroom in connection with the attorneys for the Government.

Q. (Continuing.) I guess I will ask you, if you kindly will, Mr. Eagleson, to count the number of people—you needn't give the names.

A. Just an even hundred.

Q. Your attention has been called to the names of the entrymen mentioned in this bill of complaint, and you have made your check mark after a large number of names therein mentioned. Does that check mark indicate that you are personally acquainted with those ?

A. Yes, sir; there are a few there that I am personally acquainted with that I didn't check.

Q. But you have checked how many ?

A. One hundred.

Q. Now, of the one hundred names that you have checked, state as to what you know of the persons with reference to their standing in this community as law-abiding, honest citizens.

Mr. KEIGWIN.—That is objected to on the

(Testimony of Harry K. Eagleson.)

ground, first, that it is irresponsible to anything in the examination in chief, secondly, on the ground that the answer sought for is incompetent and irrelevant and immaterial.

A. Absolutely good citizens, every one of them.

Mr. KEIGWIN.—That is objected to on the grounds heretofore stated by way of objection to the question, and counsel for the complainant give notice that at the hearing they will move to strike out the answer.

Q. What was the general established reputation of the one hundred entrymen whose names you have marked in this community, in 1902, and in the community in which they respectively reside, for truth and veracity?

Mr. GORDON.—Counsel for the complainant object to the answer of that question, as there is no foundation laid upon which he shows that he has knowledge of the reputation of these people.

A. It was good.

Q. These people that you have marked are people that you know personally? A. Yes, sir.

Q. And you know them sufficiently so that you know what their reputation in this community was?

A. Yes, sir, I have done business with pretty near all of them.

Mr. KEIGWIN.—Counsel for the complainant move to strike out that answer on the grounds heretofore stated by way of objection to these questions, and the additional ground that the answer shows that the witness is speaking with reference to his

(Testimony of Harry K. Eagleson.)

personal knowledge and acquaintance with the persons referred to, and not at all with reference to their reputation.

Q. Based upon the known reputation which you knew, these people whose names you have marked enjoyed in the community in which they lived, I will ask you as to whether or not you would believe them under oath. A. I would, any of them.

Mr. KEIGWIN.—Counsel for the complainant would like to inquire of counsel for defendants whether, in asking these questions, they desire to make this witness their own?

Mr. BUNDY.—What's the use of that? We are trying an equity suit, and we have a right to find out what he knows.

Mr. KEIGWIN.—Counsel for the defendants having declined to adopt the witness as their own on cross-examination, counsel for the complainant move to strike out all his testimony given on cross-examination, on the ground that it is not responsive to anything asked or elicited in the examination in chief.

Mr. BUNDY.—Q. Mr. Eagleson, without going into detail as to each person, I wish you would state on the record generally, as to a large portion of these people whose names you had read in this bill, as to whether or not they are old-established people in business here; state generally what their business was.

Mr. KEIGWIN.—The same objection.

A. Good substantial citizens.

(Testimony of Harry K. Eagleson.)

Mr. KEIGWIN.—Counsel for the complainant move to strike out the answer given by the witness on the grounds heretofore stated by way of objection, and the further ground that the answer itself is not responsive to the question, and undertakes to state a fact which is utterly irrelevant to any of the issues in this cause.

Mr. BUNDY.—Q. Mr. Eagleson, it is charged in this bill of complaint that the defendants, for the purpose of defrauding the United States of America out of its lands, entered into an agreement among themselves and with each of the entrymen whose names you have read, including your own, and that such fraudulent scheme contemplated, and an agreement was made by the defendants and with all of these entrymen, including yourself, by which the entrymen were to testify falsely before the land office, and in that manner procure title to timber and stone lands, and then, as soon as they had procured title, they were to transfer it to the defendants, or some of them, or to such person as they should direct. Is that allegation in this complaint true or false as far as you are concerned?

Mr. KEIGWIN.—The same objection to this question as to those heretofore asked, and on the same grounds, and on the further ground that the question calls for a statement of the witness' knowledge of the acts, conduct, motives, and intentions of other persons than the witness.

A. It is false.

Mr. BUNDY.—Q. At the time you made your

(Testimony of Harry K. Eagleson.)

original filing on this land did you have any agreement of any kind, express or implied, verbal or written, with the defendants, or any of them, or with any other person, relative to the land you were about to enter? A. No, sir, nobody.

Q. Did you have such agreement at the time you made your final proof? A. No, sir.

Q. Now, with reference to the pool you spoke of, of some claims, which consisted, I believe, of a sort of agreement between a number of the entrymen, including your relatives and yourself, and perhaps some others. What was the purpose of that arrangement?

A. We wanted to get all there was in it.

Q. That was your only object?

A. Yes, sir, and we did benefit by it, too.

Q. You did make \$50 a claim above what the evidence shows? A. Yes, sir.

Q. The understanding here generally was that claims were being bought by Mr. Kinkaid and others?

A. I don't think there had been any claims transferred up to just a few days before this time, because I never heard of any being sold.

Q. But that was the sole purpose of the little arrangement, was the theory that you could get a larger price for a large tract than for a small one?

A. Yes, sir.

Q. Mr. Downs and Mr. Wells, as you understood it at that time, were engaged in the business of cruising and locating people on timber and stone land?

(Testimony of Harry K. Eagleson.)

A. Yes, sir.

Q. And as copartners at that time?

A. Yes, sir.

Q. You said you first spoke to Mr. Wells, you went to Mr. Wells. Did you go to him or did he come to you?

A. I went to him several times.

Q. The fact was they hadn't cruised all this timber at that time?

A. I don't know as to that, I am sure.

Q. Mr. Eagleson, there has been a good deal said here in the examination of these witnesses relative to what we call the sweat-box, and the treatment witnesses have been subjected to by officers of the Government. I am not speaking of these two gentlemen here, but other supposed representatives of the Government. I will ask you whether you have had any experience in this sweat-box at any time in regard to your entry of this land since this bill was filed?

A. Yes, sir, I appeared before the Grand Jury, and also had a talk with Mr. Johnson.

Q. And in the Grand Jury you told, I suppose, in substance, the same as you have here, as far as you were asked at least?

A. Yes, sir.

Q. In the talk with Mr. Johnson, was he supposed to be a representative of the Government at that time?

A. Yes, sir.

Q. And was Mr. Ruick, formerly district attorney, in office at that time?

A. Yes, sir.

Q. Was that in open court, or in a star chamber proceeding, outside of court?

A. It was just an inquisitorial court, I presume;

(Testimony of Harry K. Eagleson.)

a kangaroo court, I presume.

Q. Just state on the record what took place, in your own way.

Mr. KEIGWIN.—Counsel for the complainant object to that as incompetent, irrelevant and immaterial; that it is utterly irrelevant to any of the issues, and on the further ground that it does not appear from anything heretofore said by the witness that the examination concerning which he is questioned had any relation to the present case; and upon the ground that it does not appear that the present suit had then been brought, but that it does appear that the inquiry was with relation to some criminal proceeding; and upon the further ground that evidence as to the manner, methods, and means by which officers of the Government procured evidence is not subject to be made the subject of inquiry in court.

Mr. BUNDY.—Q. In your own way, tell us the manner in which they proceeded there.

A. The first thing Mr. Johnson said to me—

Mr. KEIGWIN.—Can you give us the date of this, approximately? A. I couldn't say.

Mr. KEIGWIN.—Do you know whether it was before or after this bill was filed?

A. I think it was before.

Mr. KEIGWIN.—That was before the indictments were brought?

A. That was before the indictments were brought, I think, against Mr. Borah, Steunenberg, Kinkaid, and these parties.

(Testimony of Harry K. Eagleson.)

Mr. BUNDY.—This bill was filed in April, 1907.

Mr. KEIGWIN.—Q. You say it was before the indictment was brought? A. Yes, sir.

Q. Do you know when Mr. Steunenberg died?

A. I don't believe I could give you the date, but I remember it very vividly.

Q. It was Christmas week, 1905?

A. It was New Year's Eve, 1905, about eight o'clock at night.

Q. Was it 1904 or 1905? A. 1905.

Mr. BUNDY.—Go on and answer my question.

A. I always thought Mr. Johnson meant Mr. Steunenberg, that is, I think so at this time, because he had been dead for some time. He told me to talk freely with him—he wasn't after me; he was after big fish.

Q. Did he go into the details of the manner in which you made this entry?

A. Yes, sir, somewhat.

Q. And the Government at that time knew, their information was the same substantially as you have testified to here, that you entered the claim for yourself and not on agreement with anybody?

A. Yes, sir.

Q. And that was before the Government had prepared this bill, as you recollect, and charged you with being a conspirator?

A. Yes, sir—no, I think the charge had been issued before the Grand Jury was called—I am not sure about that publication; I remember it was published in the paper.

(Testimony of Harry K. Eagleson.)

Q. I am speaking of the commencement of the real action. This bill was filed subsequent to the Borah indictment, three days, I think, so that at the time this bill was filed you had related to the Government officials the manner in which your entry had been made? A. Yes, sir.

Redirect Examination.

(By Mr. KEIGWIN.)

Q. Mr. Eagleson, that was in the sweat-box, was it?

A. Yes, sir, I expect that was what was referred to as the sweat-box.

Q. Mr. Bundy started his examination by asking you what happened in the sweat-box. Was that the occasion when you were examined here?

A. There didn't anything happen to me at all. I appeared before the Grand Jury, and those two times are the only times I gave testimony before the Grand Jury, and conversation with Mr. Johnson.

Q. Mr. Johnson was Assistant District Attorney at that time, was he not? A. I think so.

Q. Which one of those was the sweat-box—the Grand Jury inquiry or the inquisitorial?

A. I wasn't sweat very hard at any time.

Q. Mr. Eagleson, did you know anything you were afraid to tell? A. No, sir.

Q. And you didn't think they could sweat you very much? A. I wasn't much.

Q. And you weren't insulted?

A. I was insulted.

(Testimony of Harry K. Eagleson.)

Q. How were you insulted?

A. By him telling me I could talk freely; that he wasn't after me—he was after bigger fish. I thought he implied by that that he thought I had possibly been crooked, and I needn't be afraid to tell about it.

Q. We haven't told you today that you could talk freely?

A. No, sir, you have been very gentlemanly.

Q. You have marked one hundred names on this list of persons named in the bill? A. Yes, sir.

Q. Have you any objection to letting me see that list? A. I have not; no, sir.

Q. Do you know all these persons whose names you have marked?

A. Yes, sir, some of the ladies I am not very well acquainted with, but all those men I know.

Q. And they are all persons for whose integrity and veracity you would vouch, are they?

A. Yes, sir.

Q. That is, you would believe anything they would say? A. Yes, sir, under oath.

Q. You wouldn't believe them not under oath?

A. There is lots of people that peddle corral dust, you know; what the politicians give their constituents, you know, when they make a speech.

Q. So you are not altogether sure of the veracity of these people when not under oath, are you?

A. Generally speaking, I would believe them.

Q. And you don't believe that any one of these hundred whose names you have marked would make an entry of the kind which is charged in this bill for

(Testimony of Harry K. Eagleson.)

speculative purposes?

A. Well, I presume there was an element of speculation in every man's mind who took a piece of timber.

Q. Now, if these people in their proof swore that they did not take the land on speculation you would accept that as being entirely satisfactory to you, would you not?

A. Yes, sir, I believe I would.

Q. Then you would be willing, I suppose, to say on this record, that so far as these persons have, or may hereafter appear to have sworn in the land office that they did not take their respective lands on speculation, you believe that to be true?

A. I would, yes, sir.

Q. There was no element of speculation in your entry, was there?

A. I presume there is always an element of speculation when a man buys anything or acquires anything; there is an element of speculation, more or less.

Q. If he buys it with the view of selling it there is an element of speculation?

A. Either one, whether he gets his values back, or more than his values and profit.

Q. I am unable to see here whether you have marked the name of Mr. W. W. Abrams?

A. I did not.

Q. Have you marked Mr. Nibler?

A. No, sir.

Q. Do you know Mr. Nibler? A. Yes, sir.

(Testimony of Harry K. Eagleson.)

Q. Do you know Mr. Abrams? A. Yes, sir.

Q. Have you marked the name of Mr. Louis K. Burns? A. No, sir.

Q. Do you know Mr. Burns? A. No, sir.

Q. Do you know Mrs. Lola Thurman?

A. No, sir.

Q. You haven't marked her name?

A. No, sir—I believe I do know Mrs. Thurman, too. Isn't she married now?

Q. She is a widow now.

A. No, I don't know her.

Q. As I understand, she has lost her husband lately.

A. I know a Mrs. Thurman whose name is now Jacobs.

(Witness excused.)

[Testimony of Louis L. Sharp, on Behalf of the Complainant.]

LOUIS L. SHARP, produced as a witness on behalf of the complainant, being first duly sworn, testified as follows:

Direct Examination.

(By Mr. GORDON.)

Q. Mr. Sharp, what is your age?

A. Thirty-two years.

Q. What was your occupation in 1901, 1902 and 1903?

A. In 1901, in August, I was appointed as special agent of the general land office, and I have held that position ever since during those years.

(Testimony of Louis L. Sharp.)

Q. Who secured your appointment for you?

Mr. BUNDY.—That is objected to as incompetent, irrelevant and immaterial.

A. Senator A. B. Foster, of the State of Washington.

Q. Where were you appointed from?

A. From the State of Washington.

Q. When were you first at Boise, Idaho?

A. I came to Boise in the early part of May, 1902.

Q. Did you come on official business?

A. Yes, sir, I came down here with the purpose of investigating timber entries in the Boise Basin.

Q. By whose direction?

A. By the direction of the then Commissioner of the General Land Office, Binger Herman.

Q. To whom did you report, when you came here?

A. Well, in fact I didn't report to anyone; only I was directed to confer with Edward Garrett.

Q. Who was Mr. Garrett?

A. At that time receiver of the land office; now a resident of Boise.

Q. Did you confer with him about lands in Boise Basin?

A. Yes, sir, I conferred with him, went over the entire matter with him before making any investigation myself.

Q. Then did you make an investigation?

A. Yes, sir; immediately after going over the matter with Mr. Garrett I went into the Boise Basin and took up the investigation of the entries of John

(Testimony of Louis L. Sharp.)

I. Wells, Jennie E. Wells, Albert P. Nugent, Arthur Anderson, James T. Ball, Hal Wells, Abel Edward Hunter, Thaddeus M. Glass, and probably one or two others that were embraced in the instructions I had received.

Q. This Hal Wells that you speak of, was that Harvey H. Wells?

A. Harvey H. Wells, a brother of John I. Wells.

Q. Now, what did you find from your investigation of these lands?

Mr. BUNDY.—I object to that as incompetent, irrelevant, and immaterial, and ask that if the witness is to be interrogated with reference to lands, that it be confined to lands involved by the issues made by the pleadings in this case, and that his attention be directed to specific land, so that the Examiner and the Court can know as to whether or not he is examined in relation to these lands involved in this action, or some other lands.

A. I found that Arthur Anderson, H. H. Wells, Albert P. Nugent, James T. Hall, and others, those entries—

Mr. FRASER.—Add the objection also that it is calling for a conclusion of the witness.

A. (Continuing.) I found that these entries had been made, the five entries I have mentioned—

Mr. BUNDY.—Hunter is the other one?

A. Yes, Abel Edward Hunter—had been made at the instance of John I. Wells, John Kinkaid, and other parties whom I did not know at that time.

Mr. FRASER.—We move to strike out the answer

(Testimony of Louis L. Sharp.)

of the witness for the reasons given in the objection thereto, and for the further reason that he states nothing but a conclusion, and no facts, and for the further reason that the entries of the five entrymen named, namely, Arthur Anderson, Wells, Ball, Hunter, and Nugent, are not embraced in the trial of this cause not mentioned in the bill of complaint, and not based upon the pleadings in this action.

Mr. GORDON.—Q. Did you know Governor Steunenberg at that time?

A. Not at that time, no, sir.

Q. Did you, from your investigation, find that he had any connection with them in these cases?

Mr. BUNDY.—Objected to as incompetent, irrelevant, and immaterial, and as asking the witness to testify to a conclusion rather than the facts upon which it is based.

A. Yes, sir.

Q. What connection did you find that he had with them.

Mr. BUNDY.—Same objection as before made, and for the same reasons.

A. That he was connected with Kinkaid and Wells, and was probably the controlling figure in the matter.

Mr. FRASER.—We move to strike out the answer, for the reasons heretofore given for striking out the other answer of this witness.

Mr. GORDON.—Q. How did you learn that Governor Steunenberg was interested in this matter?

A. I was told that he was by Senator Foster and

(Testimony of Louis L. Sharp.)

A. B. Campbell, of Spokane, Washington.

Mr. BUNDY.—I ask that the answer be struck out, it now appearing that he is testifying solely from hearsay.

Mr. GORDON.—Q. Did you have any conversation with Governor Steunenberg about these claims you have mentioned? A. Yes, sir.

Q. What did he say about them?

A. He never expressly admitted that he was the party that had advanced the money to Wells or Kinkaid, but from his conversation at different times I knew that he was.

Mr. FRASER.—We move to strike out that part of the answer in which he states his conclusion without stating the facts.

Mr. GORDON.—Q. At any time when you were talking with Governor Steunenberg about the property in the Basin, did he express his views as to the manner in which the five claims you have mentioned were acquired? A. Yes, sir.

Q. What did he say?

Mr. BUNDY.—That is objected to as incompetent, irrelevant, and immaterial, and for the further reason that the five claims mentioned are not involved in this action.

A. In the fall of 1904, I was working on what is known as the Martin group of entries, on Crooked river, and the Arbuckle entries—

Q. What Arbuckle?

A. Charles H. Arbuckle, and some others, and I met the Governor in the Hotel Idanha, and he said

(Testimony of Louis L. Sharp.)

“I see that you are chasing up Arbuckle in regard to his entry, have been talking to him,” or something of that kind, and he stated that the Arbuckle entry wasn’t the same as the Wells entry, that he wasn’t wrong in the entry; he said Arbuckle wasn’t wrong in his entry, his entry was all right, he used his own money, and was all right; it wasn’t like the Wells, Nugent, and the five we have been talking about.

Q. Now, you reported this, did you?

A. Yes, sir.

Q. To whom did you make your report?

A. I made the report to the Commissioner of the General Land Office.

Q. You reported to what effect—that these five claims were fraudulently located on?

Mr. BUNDY.—That is objected to as incompetent, irrelevant, and immaterial, asking the witness to testify to the contents of a written instrument; and counsel for the defendant now, in open court, demand the production by the attorneys for the Government of any and all reports made by the witness, L. L. Sharp, special agent, to the Department at Washington, or to any other department of the complainant, and ask that such reports be produced, and that the evidence be limited and confined to the written reports made by this witness, the written reports being the best evidence of the contents thereof.

A. I reported that all five of these parties had been employed to make these entries by John I. Wells and Kinkaid, and that the entries were fraudulent.

Mr. FRASER.—Counsel for the defendant move

(Testimony of Louis L. Sharp.)

to strike out the answer of the witness, for the reason that he is testifying to the contents of a written document, without producing the document, the document itself being the best evidence of what that report contained, and no foundation having been laid for the introduction of this evidence.

MR. GORDON.—Q. Do you know where those reports are, or have you sought to find them?

A. I don't know where they are; I sought to find them when I was here in March, 1907, at the grand jury investigation. I didn't find them at that time, but I haven't made search—

Q. Did you make search to find them at that time? A. Yes, sir, at that time.

Q. Where did you look for them?

A. Among the records on file here in this office.

MR. FRASER.—I desire to ask this witness a question. Where were your reports sent to?

A. Washington.

Q. Have you searched the archives in Washington to find them? A. No, sir.

Q. Have you asked the officials at Washington to forward those reports back to you?

A. No, sir.

Q. You don't know whether they are in the possession of the Government at Washington?

A. No, sir.

Q. These reports you hunted for in Boise were copies, were they?

A. Copies, which I naturally expected to find.

Q. You sent the originals to Washington, didn't

(Testimony of Louis L. Sharp.)

you?

A. They had the originals out here at the grand jury investigation.

Q. You don't know where they are?

A. No, sir.

Q. You don't know whether they are in the possession of the Government?

A. No, sir.

Mr. FRASER.—We renew our motion to strike, on the ground that no foundation has been laid for the introduction of this evidence.

Mr. KEIGWIN.—Counsel for the Government undertake, in compliance with the demand made by the other side, to procure the original reports made by this witness, and to offer them in evidence in connection with the testimony of this witness.

Mr. FRASER.—On the statement of counsel for the complainant, we again move to strike out all the evidence of this witness as to the contents of the reports, as counsel will undertake to procure the reports, and the reports are the best evidence.

The WITNESS.—I had better state here that one of those reports was a letter, and two or three entries are embraced in it. Now, that letter, it is possible that I won't be able to find that letter in the files here.

Mr. GORDON.—Where would it be?

A. I don't know where it would be at all.

Q. Who was it addressed to?

A. To the Commissioner, and the other three were on the blank forms.

Q. There were three reports, were there?

(Testimony of Louis L. Sharp.)

A. As I recall it now, there were two on regular blank form, and one in a letter, in which I covered three entries; that is as near as I can recall it now.

Q. After your reports was there any general order issued by the Commissioner of the General Land Office with reference to the property mentioned in your reports?

Mr. FRASER.—Counsel for the defendants object to that as incompetent, irrelevant and immaterial; he don't state what lands are embraced in the reports; and for the further reason that the report itself is the best evidence.

A. There was an order holding the entries for cancellation issued in the following year, 1903, and upon that order charges were served upon these different claims, containing charges in my report, and proceedings were based upon those charges to cancel the entries.

Mr. FRASER.—Counsel for the defendant move to strike out the answer of the witness, for the reason that he is testifying to the contents of a report, and drawing a conclusion from a report which has not been introduced in evidence, and secondary evidence, testifying to an order made by the Commissioner of the General Land Office.

Mr. GORDON.—Q. Now, after that, did anyone call upon you or talk with you with reference to these orders and your work and investigation?

A. Yes, sir.

Q. Who was it?

A. Only I would say that before those orders

(Testimony of Louis L. Sharp.)

were issued; it was Senator Foster of Washington.

Q. Was that after your report?

A. After my reports, and before the orders were issued; yes, it was after my report.

Mr. GORDON.—Q. State when that was that he spoke to you—before the order, before your report, or after the order.

A. This conversation took place after I had made my reports, and before the order was issued by the Commissioner holding the entries for cancellation.

Q. And did you go to see the Senator, or did he come to see you?

A. I went from Boise to Spokane to see the Senator.

Q. Upon his request?

A. Upon his telegraphic request to me when at Boise to meet him on his trip from Tacoma to Washington.

Q. Have you that telegram?

A. No, I haven't got the telegram with me. It is in the records of this case same place.

Q. And you went? A. Yes, sir.

Q. And where did you meet him?

A. I met him on the Northern Pacific Railroad between Tacoma and Spokane.

Q. And you had a conversation with him?

A. Yes, sir.

Mr. KEIGWIN.—Q. Was this conversation on the train? A. Yes, sir.

Q. Going into Spokane? A. Yes, sir.

Q. Did you stop off at Spokane?

(Testimony of Louis L. Sharp.)

A. Yes, sir.

Q. Did the Senator stop off there?

A. No, sir.

Q. He went on to Washington?

A. Yes, sir.

Mr. GORDON.—Q. Was the conversation relative to these five persons' claims that you have referred to here in your testimony?

A. Yes, sir.

Q. Go on and tell the rest of what you know.

A. He stated that—

Mr. BUNDY.—The witness having begun his answer by attempting to state what Senator Foster said, we object to that as incompetent, irrelevant and immaterial, and asking the witness to testify to hearsay evidence, conversation with a person not a party to this case, and for the further reason that the witness has already stated that the conversation had on the train with Senator Foster was in relation to the five claims of Anderson, Hunter, Ball, Wells and Nugent, and the entries of these parties are not included nor mentioned, nor the lands which they entered are not included or mentioned in the bill of complaint in this action.

A. He advised me that Governor Steunenberg had told him that I was down here preventing, interfering with some timber entries in some locality near Boise—he didn't know exactly where it was—and I mentioned these names to him, and he said those were the ones, and he wanted to know about what there was to it, and I told him—I went into

(Testimony of Louis L. Sharp.)

the proposition, and told him all the evidence I had and what the matter was.

Q. Did you tell him you reported these claims as being fraudulent?

Mr. BUNDY.—Before he answers that question, we move to strike out the answer of the witness, just given, for the reason that the same is incompetent, irrelevant and immaterial, and involves lands not included in this action.

The EXAMINER.—Some of these parties are mentioned in the bill as having made entries. I don't know whether it refers to the same—

Mr. BUNDY.—These entries that he is talking about were cancelled. They never did get a patent for them. The Barber Lumber Company or no one else got a patent on those entries.

Mr. KEIGWIN.—But by other entries.

Mr. FRASER.—Yes, that's true.

A. I told him I had reported the entries adversely, and had submitted evidence showing fraud, and that the entries were undoubtedly fraudulent, and he advised me that that was what he wanted to know, and for me to tell that to A. B. Campbell, the same thing I told him.

Q. Did he send you to Campbell?

A. Yes, he wanted me to tell Campbell, as I recall it now, to tell him the same story I told him about the evidence.

Q. Did he say why he sent you to Campbell?

A. Why, that Campbell was interested.

(Testimony of Louis L. Sharp.)

Mr. KEIGWIN.—Q. Can you fix the date of this conversation?

A. I can fix it close; I can't give it exactly. It was in either October or November, 1902.

Mr. GORDON.—Q. And you saw Mr. Campbell?

A. Yes.

Q. In Spokane? A. Yes, sir.

Q. Do you know Mr. Campbell's initials?

A. A. B. Campbell.

Q. Is he the man that is commonly called "Mace" Campbell?

A. Mace Campbell, the mining man.

Q. What did you say to Mr. Campbell.

Mr. BUNDY.—Objected to as incompetent, irrelevant and immaterial.

A. I told Mr. Campbell the same thing I told Senator Foster about the entries, that they were fraudulent, that I had reported them so, and the reports were there awaiting action.

Q. And what did he say to you?

Mr. BUNDY.—That is objected to as incompetent, irrelevant and immaterial, and asking for hearsay evidence, a conversation with a person not a party to this action.

A. I don't recall particularly what he stated—something on the order that he wanted to get information as to what the trouble was, and that Steunenberg had been to see him about the matter.

Q. And then did you return to Boise?

A. Yes, sir.

Q. And was there a hearing in this land office here

(Testimony of Louis L. Sharp.)

on those claims?

Mr. FRASER.—Objected to as incompetent, irrelevant, and immaterial, and as secondary evidence; the records of the land office are the best evidence as to whether or not any contest or hearing was had in the land office.

A. Yes, a hearing was held on those entries in December, 1903.

Q. That was a year or more afterwards?

A. A year afterwards. The action on these entries had been delayed for some reason in Washington for a long period; the order of the Commissioner ordering the hearing had not been issued until late in 1903.

Q. Now, Mr. Sharp, between the time you saw them in October or November, 1902, and the latter part of 1903, were you summoned to meet either Mr. Campbell or Senator Foster again?

A. Not particularly; I wrote, I believe, to Senator Foster,—

Q. Have you that letter?

A. No, I haven't that letter; I haven't been able to find it—about the matter, and he told me to see Campbell again.

Q. What was the subject of that letter?

A. Why, in going up there I had incurred an expense that, on account of the nature of the errand, I didn't feel was justly chargeable to the General Land Office.

Q. And were you asking the Senator where you were to get this expense?

(Testimony of Louis L. Sharp.)

A. Yes, sir, he told me, in fact, on the first visit, that any expense incurred he would pay himself.

Q. And you asked him for it in that letter?

A. Yes, sir.

Q. Did you receive a reply to that?

A. I received a reply.

Q. Have you that letter?

A. No, sir, it is—

Mr. FRASER.—We object to what the letter contains; the letter itself is the best evidence, no foundation having been laid for the introduction of secondary evidence of its contents.

Mr. GORDON.—We will undertake later to produce that letter.

The WITNESS.—Upon receipt of that letter, I made a second trip to Spokane.

Q. What was said in that letter?

A. As I recall it, there was only one or two lines in that letter, telling me to see Mr. Campbell and that he would fix up this expense matter.

Q. And you went to see Campbell in response to that letter?

A. In response to that letter, and that Senator Foster told me he would straighten out the expense of that trip.

Q. Did he straighten it up?

A. Yes, sir, he did.

Q. How much did he give you?

A. He gave me \$100. It was really two trips that I had made.

Mr. FRASER.—Q. You charged for the trip to

(Testimony of Louis L. Sharp.)

go to collect it, did you?

A. No, I didn't have any well-defined idea as to what the expense was; I thought about \$75, and he gave me \$100.

Q. Did he give you a check?

A. He gave me \$100, a bill; in fact I didn't know what the bill was until I got away.

Q. You wasn't handling hundred dollar—

A. That was the only hundred dollars I ever had, I believe. I just told him I thought about \$75, and he handed me \$100.

Mr. BUNDY.—That was a nice little profit of \$25.

A. No, I didn't consider it was a profit.

Q. You thought you were making \$25.

A. No, I didn't.

The EXAMINER.—Gentlemen all this conversation is taken down by the stenographer.

Mr. GORDON.—Q. Then, after that, you returned to Boise? A. Yes, sir.

Q. And were you at the hearings in the land office?

A. Yes, sir, I have conducted the hearings.

Q. Did you have any assistance?

A. I employed M. G. Cage to assist me in those hearings.

Q. And who was the counsel representing the claimants?

A. H. S. Worthman and Frank Martin.

Mr. KEIGWIN.—Q. H. S. Worthman is Mr. Harry Worthman, who has testified in this cause?

A. Yes—I don't know whether he testified.

(Testimony of Louis L. Sharp.)

Mr. GORDON.—Q. Mr. Sharp, do you know whether as a result of that hearing those entries that you have referred to were cancelled?

Mr. FRASER.—That is objected to as incompetent, irrelevant and immaterial; it is secondary evidence; the records of the land office are the best evidence of that fact.

A. They were cancelled as a result of that hearing.

Q. And an appeal was taken to the Commissioner of the General Land Office?

Mr. FRASER.—Same objection.

A. Also an appeal taken from the Commissioner's office to the Secretary's office.

Mr. FRASER.—Counsel for the defendants move to strike out the last two answers of the witness on the ground that they are hearsay evidence; the records of the land office are the best evidence, and no foundation has been laid for secondary evidence.

Mr. KEIGWIN.—Counsel for the complainant undertake to produce the records of the land office, the correspondence and other documents referred to by this witness in his testimony.

Mr. BUNDY.—By undertake I understand you promise to.

Mr. KEIGWIN.—If we can't get them, we will offer evidence to show that we can't do so, which will make this secondary evidence good primary evidence.

Mr. GORDON.—Q. This Mr. Martin you speak of was Mr. Frank Martin?

(Testimony of Louis L. Sharp.)

A. Frank Martin.

Q. You knew William E. Borah at that time?

A. Yes, sir.

Q. When did you meet Mr. Borah?

A. I met him—I don't know just the date—some time in the fall of 1902, I believe.

Q. At that time did you know of the Barber Lumber Company? A. No, sir.

Q. When did you first hear of the Barber Lumber Company?

A. I first heard of the Barber Lumber Company some time in 1903.

Q. State whether or not you knew who was the attorney at Boise for the Barber Lumber Company?

Mr. BUNDY.—We object to that as incompetent, irrelevant and immaterial, not stating the means of his knowledge or how he knew it.

A. At the time the Barber Lumber Company was incorporated it was given out currently that William E. Borah was their attorney.

Mr. BUNDY.—Q. You mean that that was common report?

A. Yes, sir.

Mr. GORDON.—Q. Did Mr. Borah represent that he was the attorney for the Barber Lumber Company? A. Yes, sir.

Q. Did you have any talk with Senator Borah about any of these timber claim entries that you were investigating? A. Yes.

Q. State what property that conversation had reference to.

(Testimony of Louis L. Sharp.)

A. In one instance we had a short conversation with reference to Ball, Hunter, Nugent, H. H. Wells and Anderson entries, I think. He asked me what I was going to do with those cases, and I told him I was going to push them through.

Q. What did you mean by "going to push them through"?

A. The hearings.

Q. That was in what year?

A. That was in 1903, just a few days before the hearing was commenced.

Q. Did he follow up that conversation with you?

A. Yes, he came up to my office and asked me.

Q. Did he talk with you about any other claims that you had under consideration?

A. Not at that time, and I don't know whether we ever did have a specific talk about particular entries. We had one other conversation, or probably several, about the general trouble or difficulty over the entries in the Basin.

Q. What were they?

A. Entries involved in this suit.

Q. What were the conversations?

A. The only one I can recall specifically was one that had reference to a protest that had been filed by parties in the Basin, sixty or seventy people up there, and those protests stated that they had been fraudulently made.

Mr. FRASER.—We object to any further evidence of this witness in regard to any protest for the reason that it is secondary evidence, and the protest is the best evidence.

(Testimony of Louis L. Sharp.)

Mr. KEIGWIN.—Q. Was that protest filed in the land office here?

A. General Land Office I suppose; I didn't look for it.

Mr. BUNDY.—Counsel for the defendant now demand that the Government produce this so-called protest.

The WITNESS.—I don't know—it was in December, 1902, that the protest was filed, or the instructions issued to me some time along there.

Mr. KEIGWIN.—Q. Do you know the date on which it got to the General Land Office?

A. No, I do not.

Mr. FRASER.—Q. Did you forward that to the General Land Office yourself?

A. I forwarded the report, and I am not certain but what I forwarded the written protest; at least I have never been able to find it since.

Q. What is your best recollection—that you did forward that protest?

A. No, I didn't think I did, because that wouldn't be my practice, but I probably did forward the protest to Washington.

Mr. BUNDY.—Somebody would have to forward it.

A. It was sent there and came back to me with a letter of protest.

Q. Then it was filed there?

A. Yes, it was filed.

Mr. GORDON.—I want to read through this record here, and you can proceed to examine him. I

(Testimony of Louis L. Sharp.)

may ask another question later.

Mr. FRASER.—It is after noon now.

Mr. GORDON.—Of course you can take all the time you want, but I have held Mr. Sharp here, and he wanted to get away.

Mr. BUNDY.—I am perfectly willing to come back this afternoon and cross-examine Mr. Sharp, but if the Court doesn't want to sit I will not insist upon it.

The EXAMINER.—The Judge of this court suggested that it would be in better taste to suspend.

Mr. BUNDY.—There was no reason why they shouldn't have put Mr. Sharp on before.

At this time an adjournment was taken until 10 A. M., Saturday, February 13, 1909.

Court met, pursuant to adjournment, at 10 A. M., Saturday, February 13, 1909, the Examiner and counsel for the respective parties being present, at which time the witness Louis L. Sharp resumed the stand.

Mr. BUNDY.—During the direct examination of this witness we objected to most of his evidence relative to reports and proceedings in the land office and department for the reason that the reports and proceedings were the best evidence. Counsel for complainant said they would undertake to produce those reports and records, and we do not care to cross-examine this witness until those reports and records are produced, and we wish to serve notice now that unless said reports and documents testified to by this witness are produced, and this witness presented

(Testimony of Louis L. Sharp.)

for cross-examination after their production, we will move the Court to strike out all his testimony.

Mr. GORDON.—Yesterday, before we adjourned, we had not had an opportunity to get these reports and records, and, as the witness has to go east, it is extremely tiresome to us to—

Mr. BUNDY.—You can let him go, but unless he is produced for cross-examination, together with the documents referred to, the Court will be moved to strike out all his evidence. I wish I had come to that conclusion before, but I have been trying ever since to get in communication with Frank Martin and have been unable to do so.

(Witness excused.)

[Testimony of Alfred Bayhouse, on Behalf of the Complainant.]

ALFRED BAYHOUSE, produced as a witness on behalf of the complainant, being first duly sworn, testified as follows:

Direct Examination.

(By Mr. GORDON.)

Q. Your name is Alfred Bayhouse?

A. Yes, sir.

Q. What is your occupation, Mr. Bayhouse?

A. I am in the floral business.

Q. How long have you been engaged in that business?

A. Why, about twelve years.

Q. Are you the proprietor of a floral establishment?

A. I am one of the proprietors.

Q. Where do you reside?

(Testimony of Alfred Bayhouse.)

A. 1010 O'Farrell street, Boise.

Q. How long have you resided at Boise?

A. Why, I was born here.

Q. You took up a claim under the Timber and Stone Act in 1902, did you? A. Yes, sir.

Q. I show you timber and stone land sworn statement, dated December 15, 1902, and ask you if that is your signature attached?

A. Yes, sir, it is.

Q. And you filed that paper in the land office?

A. Yes, sir.

Q. I show you testimony given by Alfred Bayhouse on final proof, dated January 19, 1903, and ask you if that is your signature? A. Yes.

Q. And that is your signature to the cross-examination attached? A. Yes.

Q. I show you deed, dated February 12, 1902, made by Alfred Bayhouse, bachelor, to Horace S. Rand. Is that your signature to that?

A. That is it, I suppose; it looks like it.

Q. Don't you know? A. Yes, it is.

Q. Mr. Bayhouse, who was the first person that that spoke with you about taking up a timber claim?

A. Why, the first time I considered it seriously I was talking with my brother in regard to it.

Q. Which brother? A. Henry.

Q. Had you talked to anyone else about taking up a timber claim?

A. No, not with regard to taking it up; I had conversed considerable about it; it was common talk around.

(Testimony of Alfred Bayhouse.)

Q. With whom had you conversed?

A. I couldn't say; it was common conversation.

Q. At that time did you know John I. Wells?

A. No, only by sight.

Q. You had never had any business with him?

A. No, sir.

Q. Had you ever known Patrick Downs?

A. No, sir, only by sight.

Q. John Kinkaid?

A. No, I didn't know him.

Q. Louis M. Pritchard? A. No.

Q. Did you go to look at this land? A. Yes.

Q. With whom did you go?

A. You mean the parties who went with me from here?

Q. Yes.

A. Why, one of them was a sheep-man by the name of James Belk, and I don't know the other parties—he is a farmer down the valley, farmer and sheep-man, and my brother Henry.

Q. Who got the party together?

A. I believe Henry and Belk did, as far as I know.

Q. Did you pay for the team?

A. Why, we had our own team.

Q. You mean you owned the team?

A. Yes, the party; it belonged to Belk and the other man.

Q. Did you know what it was going to cost you when you went up there—the location fee?

A. Yes, \$25.

(Testimony of Alfred Bayhouse.)

Q. Did you know who was going to locate you?

A. Yes, I understood Downs was.

Q. Who told you Downs would locate you?

A. Henry did, as far as I know; in fact I knew he was a locator. I had seen him for months around.

Q. And you went up there and were located?

A. Yes.

Q. Where did you go—what place?

A. Why, as near as I can judge, it was northeast of Kempner's.

Q. You stopped at Kempner's, did you?

A. Yes, sir.

Q. Did you meet Mr. Downs at Kempner's?

A. Yes.

Q. How far was this land you located from Kempner's?

A. I couldn't state at this time; I suppose about four or five or six miles, something like that.

Q. Did all of you go to be located at once?

A. Yes, about four in the party.

Q. Did you know what property you were going to be located on before you left here?

A. No, I didn't.

Q. Did you have any talk with Mr. Downs before he located you as to what land you wanted?

A. No, sir.

Q. And he took you out, and did he show you a particular piece of land and locate you on that?

A. Yes, sir.

Q. He showed you a piece and that was the piece

(Testimony of Alfred Bayhouse.)

you located on? A. Yes.

Q. To whom did you pay the location fee?

A. My brother Henry paid; I told him to settle.

Q. Do you know to whom he paid it?

A. I think to Mr. Wells, but of course I couldn't swear to it.

Q. Did you meet Mr. Wells after that?

A. No, I didn't meet Wells until quite a time after that.

Q. Do you know who prepared this first paper, the sworn statement, the first paper you filed in the land office? A. No; I know where I got it.

Q. Where did you get it?

A. I got it in the Pioneer Building.

Q. At whose office?

A. I couldn't say that; I think it was Kinkaid I got it from—I am not positive.

Q. How did you happen to go there to get it?

A. My instructions from Henry—that was where he got his.

Q. Did Mr. Downs give you a description of this property? A. It was on our papers.

Q. I mean, did he give you a paper when you came away from there? A. No.

Q. And your brother attended to getting the description in the paper prepared.

A. Yes, I was busy at the time.

Q. Did you go to the land office alone to file your sworn statement?

A. I believe the first time, yes.

Q. And then, in the course of two or three months,

(Testimony of Alfred Bayhouse.)

it came time to make your final proof? A. Yes.

Q. I will ask you if, when you made your entry, you had, at that time, the money with which to purchase this property?

A. Why, practically all of it. I got some from Henry; I was short a little.

Q. Where did you keep this money that you had?

A. Why, I had it out to the house. I used to keep quite a lot of money out there, as a rule.

Q. You didn't have it at the bank? A. No.

Q. Do you know how much you borrowed from your brother Henry?

A. I couldn't say now; I think probably \$100 or \$150, something like that.

Q. Your best recollection is that you borrowed between \$100 and \$150 from your brother Henry?

A. I think something like that; I couldn't state positively, it was so long ago.

Q. It wasn't \$400?

A. No, I don't think it was—I don't think it was \$400; I couldn't say.

Q. Your best recollection is \$100 or \$150?

A. Yes. I am very dim on that part of it, because I know I had money, and I went out and made some collections at that time that were standing out in the business. I was in with my father at that time.

Q. Now, with the collections, besides what you borrowed from your brother—the money you paid in, was it made up of money you had, and money you collected, and money you borrowed from your

(Testimony of Alfred Bayhouse.)

brother at that time? A. Yes, sir.

Q. Do you remember how much you collected that day or the day before? A. No.

Q. Do you remember how much of your own money you had? A. No, I don't, exactly.

Q. Well, as near as you can remember.

A. Well, I might have had a couple of hundred dollars, something like that.

Q. Do you know how long you had had that money?

A. Yes, we had it right there; half of it was mine.

Q. As I understand, you kept it in the house where you lived? A. Yes.

Q. Do you know how long you had had it in the house?

A. Well, we had more or less all the time.

Q. I mean this particular money?

A. No, I don't.

Mr. FRASER.—Q. You do business at the house, don't you—that is your place of business?

A. Yes, sir.

Mr. GORDON.—Q. What did you think this property was valued at, what the value of it was?

A. I couldn't estimate the value of a timber claim exactly; I should judge it was worth \$1,000, or something like that.

Q. And you paid, when you made your final proof in the land office, a little over \$400?

A. Yes, sir.

Q. Now, at this time did you know of anyone that was buying timber claims in that section of the

(Testimony of Alfred Bayhouse.)

country? A. No, I did not.

Q. When you made your final proof?

A. No, I didn't know positively of any party buying it, that is, the names of the parties. They were being bought.

Q. I show you affidavit made January 19, 1903, and ask you if that is your signature?

A. Yes, that is my signature.

Q. You filed on this claim September 15, 1902?

A. I should judge that was the time.

Q. And, according to your advertisement, you should have proved up on the 9th of January, 1903?

A. Yes, I believe that was about the time.

Q. And at that time you didn't have the money with which to prove up? Is that right?

A. Why, I didn't refuse to prove up at that time.

Q. You didn't prove up until several days later, did you?

A. I don't know the reason that I didn't.

Q. I will ask you to read that affidavit and see if that refreshes your memory (hands witness affidavit).

A. Well, I have no recollection of anything of that kind at all.

Q. What did you say about that affidavit?

A. I say, I have no recollection of it. I thought I proved up when my time called for.

Q. You remember having made that affidavit, don't you?

A. No, sir, I don't remember that; I have no recollection of making it at all.

(Testimony of Alfred Bayhouse.)

Q. You signed that affidavit?

A. It looks like my signature, but I have no recollection of it at all.

Q. Now, I find a nonmineral affidavit here, dated September 15, 1902. Is that your signature to that?

A. Yes.

Q. Now, how long after you made your final proof did you have an offer for the sale of this land, or the purchase of it?

A. I should judge it was about three or four weeks, something like that.

Q. And who spoke with you then?

A. I didn't sell until Henry did. I sold either the day after or the same day, I don't know which.

Q. Who arranged for the sale of this? Did you arrange for it yourself, or did somebody arrange it for you?

A. No, he sold, and he said he thought I could sell to Kinkaid, and I went up there and offered it for sale and sold it.

Q. You only went to see Mr. Kinkaid once?

A. Yes, sir.

Q. Did you know Mr. Horace S. Rand?

A. No, I didn't.

Q. Did Mr. Kinkaid prepare this deed for you that you signed? A. I suppose he did, yes.

Q. You signed it at his office?

A. I signed it at his office, yes.

Q. I notice that it is acknowledged before Mr. L. M. Pritchard. Was Mr. Pritchard there, or did you go out to his office?

(Testimony of Alfred Bayhouse.)

A. We went over to the Sonna Building.

Q. And that is where it was acknowledged?

A. Yes, sir.

Q. Did you know Mr. Pritchard or were you introduced to him at that time?

A. No, I was simply given the number of his office. I went from Kinkaid's office after signing the deed to, I think, Mr. Pritchard's.

Q. How much were you paid for this land?

A. \$800.

Q. Were you paid in cash? A. In check.

Q. Do you know whose check it was?

A. No, I don't know whose check it was now; I have forgotten.

Q. Had you met Mr. Wells with reference to this property at any time before you sold it?

A. No, I hadn't.

Q. Have you met him since?

A. Lots of times, yes, sir.

Q. With reference to this property?

A. No, sir; not at all.

Q. Have you ever talked to him about this case?

A. No, nothing to amount to anything.

Q. What do you mean by "nothing to amount to anything"?

A. Why, there is more or less talk about the timber locations, and just in a casual sort of way; he never asked me in regard to what I was going to say up here or anything like that.

Q. Did he talk to you about this case?

A. No, not about the case.

(Testimony of Alfred Bayhouse.)

Q. There wasn't any discussion at all about this case having been filed or anything of that kind?

A. I never spoke to him about this to speak of at all. We was conversing on some other subject. I never met him only to speak a few words.

Q. When was the last time you met him and spoke to him?

A. I think I spoke to him yesterday. I said "good morning," or something like that.

Q. When was the last time you had any talk with him before that?

A. I couldn't say. We never had any talk to amount to anything, because we were not very well acquainted.

Mr. GORDON.—Complainant offers in evidence timber and stone land sworn statement, dated September 15, 1902, signed Alfred Bayhouse; the testimony of Mr. Bayhouse given on final proof, dated January 19, 1903; the cross-examination attached; the testimony of the witnesses, and the cross-examination, given on final proof; affidavit of Mr. Alfred Bayhouse, dated January 19, 1903; non-mineral affidavit, signed by Mr. Bayhouse, dated September 15, 1902; notice for publication, dated September 15, 1902; the register's and receiver's certificates, dated January 19, 1903; the patent; and the deed of Alfred Bayhouse to Horace S. Rand, dated February 12, 1903, consideration \$800, all to the southeast quarter of section 3, township 7 north of range 8 east, Boise Meridian.

(Testimony of Alfred Bayhouse.)

(Alfred Bayhouse papers marked Plaintiff's Exhibit No. 64A to 64O, inclusive.)

Q. Did you file at the same time your brother George did? A. No, before.

Q. And it was Henry that attended to these transactions for you, not George?

A. Yes, Henry and I went up together.

Cross-examination.

(By Mr. BUNDY.)

Q. Mr. Bayhouse, you testified that Pat Downs pointed out a particular tract for you.

A. Yes.

Q. Did you understand that Pat Downs was making the selection for you, or was he pointing out one, and you selected it yourself?

A. Well, he was doing the locating, and I simply went on his judgment.

Q. You didn't mean that Mr. Downs was locating you on land for somebody else?

A. No, not necessarily.

Q. If the land hadn't been satisfactory to you you would have promptly told him so?

A. No, there was plenty of timber on the claim he showed me.

Q. You were satisfied with that claim he pointed out to you?

A. Yes, sir; I was perfectly satisfied.

Q. Otherwise you wouldn't have taken it?

A. No, sir.

Q. Mr. Bayhouse, at the time you made your original filing in the land office, and at the time you

(Testimony of Alfred Bayhouse.)

made your final proof, was there any agreement, express or implied, in writing or verbal, by which you had undertaken and promised or obligated yourself to turn over the title to the land you might acquire from the United States to the Barber Lumber Company or anyone else? A. No, sir; there wasn't.

Q. It is charged in the Government's complaint in this action we are trying, Mr. Bayhouse, that the Barber Lumber Company, Kinkaid, and others, entered into a conspiracy with you and a good many other entrymen, to defraud the United States out of the title to certain timber lands. Is that true or false? A. It is false.

Q. And it is also alleged in that bill that, for the purpose of defrauding the United States, the Barber Lumber Company and the other defendants induced you to go to the land office and perjure yourself by testifying to that which was false to enable you to get this land and turn it over to them. Is that allegation true or false?

A. It is false as far as I am concerned.

(Witness excused.)

[Testimony of Helen E. Eagleson, on Behalf of the Complainant.]

HELEN E. EAGLESON, produced as a witness on behalf of the complainant, being first duly sworn, testified as follows:

Direct Examination.

(By Mr. GORDON.)

Q. You are Mrs. Helen E. Eagleson?

(Testimony of Helen E. Eagleson.)

A. Yes, sir.

Q. And what is your husband's name?

A. Harry K. Eagleson.

Q. You took up a timber and stone land claim under the Timber and Stone Act in October, 1902, did you?

A. Yes, sir; I think that is the date.

Q. I show you sworn statement dated October 7, 1902, and ask you if that is your signature?

A. Yes, that is my signature.

Q. I show you testimony given on final proof by Helen E. Eagleson, dated February 12, 1903, and ask you if that is your signature? A. Yes, sir.

Q. Is that your signature to the cross-examination attached? A. Yes.

Q. Is that your signature to the non-mineral affidavit, dated October 7, 1902? A. Yes.

Q. Did anyone suggest to you that you were to take up a timber claim?

A. Not anyone but my husband spoke to me about it.

Q. And before you took up this claim, did you have any arrangements with anybody to locate you?

A. Mr. Eagleson attended to the details—I suppose he did. I don't know.

Q. Now, at the time that you located and filed this statement in the land office, this sworn statement, did you have the money of your own with which to pay for this property? A. Yes.

Q. Did you have it in the bank?

A. My husband gave it to me.

(Testimony of Helen E. Eagleson.)

Q. He didn't give it to you until you needed it to make your final proof?

A. No, not until I needed it to make final proof.

Q. You saw this land before you filed this first paper in the land office?

A. Yes, sir.

Q. Where did you go to see the land?

A. We went up beyond what is known as Kemper's ranch, on Crooked river, I think.

Q. And did you meet anyone there who located you?

A. Yes, sir.

Q. Who was that?

A. Mr. Downs.

Q. Mr. Patrick Downs?

A. Yes, sir.

Q. And did you know Mr. John I. Wells at that time?

A. No, sir.

Q. Have you met him since?

A. I think I have.

Q. Did you ever have any talk with him?

A. I don't know that I ever did.

Q. Did you ever have any talk with him concerning the land on which you located?

A. No, sir; I think not.

Q. What is your best recollection?

A. I believe—I am not sure that is the man, so I may be mistaken.

Q. That is the man sitting there (pointing).

A. I am not sure but what Mr. Wells came to our house about a year ago perhaps, or during the time the Grand Jury met here, with some questions for me to answer, and, if I remember correctly, I answered them.

Q. Did he write the answers down that you made?

(Testimony of Helen E. Eagleson.)

A. Why, he had a blank with certain forms to fill out, if I remember correctly. I think that is the gentleman; I am not sure, I couldn't swear to that—that is as I remember. That was the only time I ever met Mr. Wells, or knew who he was, and he introduced himself.

Q. And those questions had to do with the manner in which you acquired this property?

A. Yes, sir.

Q. Did he tell you that anyone had sent him there? A. No.

Q. Did Mr. Downs locate all of you at the same time that went with you, your husband and the others of the party?

A. I think a part of us went out one day and part the next, if I remember correctly; I believe that is the way we went.

Q. You located on the piece he showed you?

A. Yes, sir.

Q. And you didn't have any preference with reference to claims; you took the one that he pointed out to you as yours, did you? A. Yes, sir.

Q. Was Mr. John I. Wells up to Kempner's ranch while you were there?

A. No, sir; I never saw Mr. John I. Wells until last year.

Q. Have you seen Mr. Wells since then to talk to him? A. No, never to talk to him.

Q. Did Mr. Downs give you a description of this property?

A. He gave it to Mr. Eagleson, I think.

(Testimony of Helen E. Eagleson.)

Q. And where did you receive that first paper there that I showed you, the sworn statement?

A. I don't know, unless it was in the land office; I remember going to the land office.

Q. Did you go to anybody else's office after you returned before you went to the land office?

A. Not that I remember of.

Q. You didn't know Mr. John Kinkaid at that time?

A. No, sir.

Q. Nor Mr. Louis N. Pritchard?

A. No, sir.

Q. Do you remember who brought that paper to the land office—was it your husband?

A. No, I don't know.

Q. Were you at the land office with your husband, or did you go with someone else?

A. To my best recollection, I think Mr. Eagleson was with me; it has been a long time ago.

Q. Then in the course of two or three months you went to the land office and paid over \$400 in the land office?

A. Yes, sir.

Q. And you made what is called your final proof?

A. Yes, sir.

Q. Now, will you tell me where you got the money with which you made final proof, and from whom you received it?

A. Mr. Eagleson transacted that part of the business for me. We were there in the land office when I paid the money, I am sure, that is, for the land.

Q. Then you received it from Mr. Eagleson?

A. Yes.

(Testimony of Helen E. Eagleson.)

The EXAMINER.—Is that your husband?

A. Yes, sir, that is my husband.

Mr. GORDON.—Q. At the time you made your final proof, did you have any knowledge of what this property was worth? A. No, I did not.

Q. Did you pay Mr. Patrick Downs a locating fee, or did your husband pay it for you?

A. My husband paid it.

Q. You have sold this property, have you?

A. Yes, sir.

Q. Do you know to whom you sold it?

A. I do not.

Q. Do you know with whom you negotiated this sale?

A. No, I don't know that; Mr. Eagleson transacted that part of the business, and I remember signing a deed.

Q. Do you remember in whose office you signed the deed? A. I think at home.

Mr. GORDON.—Complainant offers in evidence timber and stone land sworn statement, dated October 7, 1902, signed Helen E. Eagleson; notice for publication of the same date; non-mineral affidavit of Helen E. Eagleson, dated October 7, 1902; the testimony of Mrs. Eagleson, on final proof, dated February 12, 1903; the cross-examination attached; the examination of witnesses on final proof; the register's and receiver's certificates, dated February 12, 1903; certified copy of patent; and the deed, which was offered in evidence with her husband's papers, all to the south half of the northwest quarter of sec-

(Testimony of Helen E. Eagleson.)

tion 23, and the south half of the northeast quarter of section 22, township 7 north of range 8 east, Boise Meridian.

Mr. BUNDY.—Wherever you offer the patent, it is understood, of course, that there is a patent and that you will file it.

Mr. GORDON.—Yes.

(Helen E. Eagleson papers marked Plaintiff's Exhibit No. 65A to 65N, inclusive.)

Cross-examination.

(By Mr. BUNDY.)

Q. Mrs. Eagleson, you have lived in this city a good many years, haven't you? A. Yes, sir.

Q. You and your husband are members of the old families, aren't you?

A. I don't know whether you would call us old families or not; the family has been here eighteen years or so.

Q. Your husband and his brothers have all been in business here a good many years?

A. Yes, sir.

Q. I think your husband told us yesterday that at the time of your marriage you had some money, which he has been using ever since.

A. Yes, he has had the use of my money.

Q. At the time Mr. Downs pointed out that particular tract to you it was satisfactory, was it not?

A. Yes, sir.

Q. You didn't understand that you were under obligation to take whatever piece Mr. Downs pointed out, did you? A. Oh, no.

(Testimony of Helen E. Eagleson.)

Q. Mr. Downs, as you understood it, was a cruiser, and was working for you as your employee to select a suitable piece for you?

A. That is as I understood it.

Q. And if it hadn't been a satisfactory piece you wouldn't have taken it? A. No, sir.

A. I take it from your evidence, Mrs. Eagleson, that you never had any arrangement, express or implied, in writing or verbal, with anybody, by which you contracted to turn this property over to anybody else until you got title.

A. Not at all.

Q. At the time you filed your first papers you never had had any such negotiations with anybody?

A. No, sir.

Q. And you had had none at the time you made your final proof? A. None at all.

Q. Mrs. Eagleson, it is charged by the United States in this complaint here that you, together with some two hundred other citizens of Boise, and vicinity, entered into a conspiracy with the Barber Lumber Company, and Mr. Kinkaid, and Wells, and Pritchard, and other people, to defraud the United States out of title to that land. Is that true or false as far as you are concerned? A. It is false.

Q. And it is alleged by the Government in this case that, for the purpose of perpetrating that fraud upon the United States, the Barber Lumber Company and the other defendants induced you to go to the land office and deliberately perjure yourself for

(Testimony of Helen E. Eagleson.)

the purpose of getting land to turn over to them. Is that allegation true or false? A. It is false.

(Witness excused.)

[Testimony of Susan N. Arbuckle, on Behalf of the Complainant.]

SUSAN N. ARBUCKLE, produced as a witness on behalf of the complainant, being first duly sworn, testified as follows:

Direct Examination.

(By Mr. GORDON.)

Q. You are Mrs. Susan N. Arbuckle?

A. Yes, sir.

Q. What is your husband's name?

A. Charles H. Arbuckle.

Q. Where do you reside, Mrs. Arbuckle?

A. In Boise.

Q. How long have you resided in Boise?

A. Well, we have resided here off and on for close to ten years.

Q. You have taken up a timber claim under the Timber and Stone Act, haven't you?

A. Yes, sir.

Mr. BUNDY.—Read the description. I object to the reception of any evidence on the part of Mrs. Susan N. Arbuckle with reference to the timber and stone entry made by her on May 3, 1902, for the reason and upon the grounds that it is utterly incompetent, irrelevant and immaterial, not an issue in this action; the lands embraced in such entry are not mentioned or described in the bill of complaint under

(Testimony of Susan N. Arbuckle.)

consideration, nor is there any charge in this bill that Mrs. Arbuckle—or that the lands entered by Mrs. Arbuckle were improperly entered, or that they now belong to any of the defendants.

Mr. GORDON.—Q. I show you timber and stone land sworn statement, dated May 3, 1902, and ask you if that is your signature to that paper?

A. Yes.

Q. And you filed that paper in the land office?

A. What paper is that?

Q. That is the first paper. A. Yes.

Q. I show you non-mineral affidavit, dated May 3, 1902, and ask you if that is your signature to that paper? A. Yes, sir.

Q. Your testimony given on final proof, dated July 24, 1902, and ask you if that is your signature to that?

A. That is my signature. Let's see—this is the final proof?

Q. Yes, final proof.

A. That was on July 24, 1902?

Q. Yes. That is your signature?

A. Yes, sir.

Q. And that is your signature to the cross-examination attached? A. Yes, sir.

Q. I show you deed, made March 20, 1903, by Charles H. Arbuckle and Susan N. Arbuckle, his wife, to A. E. Palmer, and ask you if that is your signature to that?

A. Yes, that is my signature.

Q. Is that the signature of your husband, too?

(Testimony of Susan N. Arbuckle.)

A. It looks like it.

Q. Do you know Mr. John I. Wells?

A. Yes.

Q. When did you first meet him?

A. I don't remember just when.

Q. How long ago?

A. I couldn't say just how long since I first met him. I don't know him very well.

Q. Has your acquaintance with him been social or in a business way?

A. It has been in more of a business way. I just met the man, and that is all I know about it.

Q. Who first spoke with you about taking up a timber claim? A. My husband.

Q. What did your husband tell you about it?

Mr. BUNDY.—We object to that as incompetent, irrelevant and immaterial, and asking for hearsay evidence and the statement of a person not a party to this action.

A. He said he understood there was timber being taken up and thought we had just as well take up a timber claim.

Q. At that time did you have money of your own with which to purchase a timber claim?

A. We had some money, yes.

Q. I am speaking about you personally.

A. I had some money, yes.

Mr. BUNDY.—Do you mean at the time of the first filing?

Mr. GORDON.—Yes.

Mr. GORDON.—Q. How much money?

(Testimony of Susan N. Arbuckle.)

A. I don't know. I don't remember just how much we had.

Q. Do you know how long you had had that money?

A. Certainly not, no; because it comes and goes.

Q. And did you know how much money those claims were to cost?

A. I couldn't say now whether I did or not at that time; it has been so long I can't remember.

Q. Who did you go with when you viewed this land?

A. My husband.

Q. Anyone else?

A. There was a McDonald, I think, and James.

Q. Mr. Henry James?

A. I think so; I don't remember their given names.

Q. Do you know who arranged for that party?

A. I do not.

Q. Well, where did you meet them?

A. They came to my house.

Q. And did you know who was to locate you before you started from your house?

A. I can't say that I did.

Q. Did you know Mr. Patrick Downs at that time?

A. No, sir.

Q. Did you know Mr. John I. Wells at that time?

A. No, I don't think so.

Q. And where did the party go, what city or town?

A. Centerville, I believe, if I remember right.

Q. And how far was the land that you located

(Testimony of Susan N. Arbuckle.)

from Centerville?

A. I don't know just how far it was, although I don't think it was so very far.

Q. Was it two miles or twenty?

A. I couldn't tell you the exact distance.

Q. Where did you stop at Centerville?

A. At the hotel.

Q. Do you remember the name of the hotel?

A. No, sir, I don't; it was a boarding-house.

Q. What time of day did you get there?

A. Along in the evening.

Q. Did you locate that evening or the next day?

A. The next day, I think.

Q. Did you go out with the rest of them when they were located, or were you taken separately?

A. I think we were all together.

Q. Who located you?

A. Mr. Downs, I believe.

Q. Did he take Mr. James and Mr. McDonald along with you and your husband when you located?

A. Yes, sir.

Q. Did you all get claims at the same time?

A. I think they got claims during that day that I was located.

Q. And did you go over your claim?

A. Yes, sir.

Q. How far was this from Centerville?

A. I don't know the exact distance.

Q. Well, as near as you can judge.

The EXAMINER.—They don't expect you to tell exactly.

(Testimony of Susan N. Arbuckle.)

A. It might have been a mile or a mile and a half, something like that; I believe it was less than two miles. I know they drove out with the team, and it didn't seem to me very far.

Q. Did you know what lands you were to be located on before you started? A. No, sir.

Q. Did Mr. Downs show you a timber claim and say, "That is the one you are to be located on."

A. I don't remember his language that he used. I don't think he used that language.

Q. What did he say? How were you located?

A. I think we went to this, and I think he said "This is a nice claim," and the weather was very damp—it had been storming some—it was handy and not very far, and it would be nice for me.

Q. And you took that one? A. Yes, sir.

Q. Did he give you a description of it there?

A. I think he told me at the time the description of it. I don't think he gave me any paper or anything; I think he just mentioned the description of it.

Q. What did you do with that description that he gave you?

A. I don't think he gave me any paper at all. I think he just orally told me the description of it.

Q. Did you remember that, or did you make a note of it?

A. No, I didn't, so I don't remember the description of it at all.

Q. Then you returned to Boise with the rest of the party that went with you? A. Yes, sir.

Q. And how long after you returned did you go

(Testimony of Susan N. Arbuckle.)

to the land office and make your entry, or file this sworn statement that I have shown you?

A. I don't remember the exact dates.

Q. How long after your return—was it the same day?

A. No, I think not the same day.

Q. When was it?

A. It was a few days; I can't remember just what time we went to the land office, but I suppose it was very soon after.

Q. Well, did you see Mr. John I. Wells after you returned, before you filed that paper, that sworn statement?

A. I don't remember of it.

Q. Do you remember with whom you went to the land office?

A. My husband.

Q. Anyone else there?

A. I don't remember.

Q. Was Mr. John I. Wells there?

A. In the land office?

Q. Yes.

A. I don't remember him.

Q. Did you know Mr. Edward E. Garrett, the receiver of the land office?

A. No, sir, I never met him that I remember of.

Q. Who introduced you to Mr. Garrett?

A. I presume my husband did.

Q. You are sure that Mr. John I. Wells didn't?

A. I don't remember it.

Q. Had you ever met Mr. Wells at that time?

A. Not that I remember of.

Q. Where did you receive this sworn statement, the first paper you filed in the land office? Who pre-

(Testimony of Susan N. Arbuckle.)

pared it for you and where did you receive it?

A. That is May 3d? I couldn't tell you to save my life where I received it or where it was prepared.

Q. If you will look down at the bottom there you will see that it states in that paper that you were identified by Mr. John I. Wells.

Mr. BUNDY.—It isn't any statement she made. That appears to be something Garrett says. I object.

Mr. GORDON.—I am asking her to read that to refresh her memory, to see whether or not she remembers whether Wells was there.

Mr. BUNDY.—That part of the land business was purely a matter of form. The receiver put that in himself. Garrett will tell you that.

The WITNESS.—I couldn't tell at all.

Mr. GORDON.—Q. Did you see Mr. Wells at Centerville when you were there? A. No, sir.

Q. Now, after you filed this paper in the land office, and several months had elapsed, you went back to the land office to make your final proof, and do you remember how much you paid in to the land office on that occasion?

A. No, sir, I do not remember how much.

Q. Do you remember how much you paid the first time you went to the land office and filed any papers with reference to this claim? A. No, I do not.

Q. Did you pay any money yourself?

A. I can't remember whether I did or not.

Q. Did you pay a filing fee yourself? I want to know whether you remember anything about it.

(Testimony of Susan N. Arbuckle.)

A. No, I don't remember.

Q. Do you remember whether or not you paid \$12.50 for advertising? A. No, sir.

Q. Do you know how much money you paid in the land office when you went there to make final proof? Have you any idea how much you paid?

A. I have not.

Q. Was it \$50 or \$600, or any amount between that? A. I don't know how much it was.

Q. You haven't an idea? A. No, sir.

Q. With whom did you go to the land office when you made your final proof?

A. I went with my husband.

Q. He was there when you made your final proof?

A. I think so.

Q. Do you remember where you got the money with which to make your final proof?

A. If I remember, we were not living here at that time, and we had the money when we came here to pay for it.

Q. Where were you living at that time?

A. We were living at Soldier.

Q. How far is that from Boise?

A. Something like a hundred miles.

Q. And you came down that day so as to make final proof?

A. We came so as to be here on the 24th.

Q. Now, you say you had your own money. Do you mean that you had it separate and distinct from your husband's money?

A. No, I don't know as it was separate and dis-

(Testimony of Susan N. Arbuckle.)

inct; we usually kept our money together.

Q. Did you have any money of your own by inheritance or by your own exertions that you made?

Mr. BUNDY.—I object to that as immaterial. What's the use of trying to find out something that has nothing to do with the case? You haven't any idea, Mr. Gordon, that it makes any difference in this lawsuit that that was her money or her husband's money?

Mr. GORDON.—I am trying to find out whose money it was.

Q. Did you have any money of your own, separate from what you and your husband had together?

A. Well, I always had a little money separate. He always gave me money, and then I had made some money?

Q. Do you know whether you had any of this money at that time?

A. I think so, because I was running a hotel at that time.

Q. And do you know whether you made this money running the hotel or not?

A. I think I made some of it in running the hotel.

Q. Do you know how much of it you had that you made from running the hotel? A. No.

Q. Do you remember whether it was \$50 or \$100 that you had of your own money?

A. I don't remember just how much money I had of my own. I know we had quite a little money, and the money that we put away usually was kept together.

(Testimony of Susan N. Arbuckle.)

Q. And this was that money that you had made together and had put away? A. Yes, sir.

Q. Now, do you remember when you made this final proof?

A. It was on the 24th of July, I believe.

Q. 1902? A. Yes.

Q. Now, how long after that was it that you sold this land?

A. It was in March, I should judge. That is the way I remember it. That paper says in March, but I knew it was some time in the latter part of February or in March that we sold.

Q. Had anybody spoken to you about selling this land before that time? A. No, sir.

Q. Do you know to whom you sold it?

A. I don't remember; the deed says Palmer.

Q. To A. E. Palmer? A. Yes.

Q. Whom did you see that you transacted this business with with reference to the sale of this property?

A. I think his name was Pritchard. If I remember, that was the name.

Q. Did you go to Mr. Pritchard's office?

A. I presume we did.

Q. Don't you know whether you went to Pritchard's office or not?

A. No, I don't remember those things.

Q. Do you know where you signed this deed?

A. I must have signed it at Pritchard's office, but I am not positive.

Q. Do you know who prepared the deed?

(Testimony of Susan N. Arbuckle.)

A. No, sir.

Q. Was it there when you went there?

A. I couldn't say.

Q. Were you paid any money the day you signed this deed?

A. I don't remember whether the money was paid to me or not, but I think my husband received the money.

Q. Did you have any talk with Mr. Pritchard as to what you should be paid for this property?

A. No, sir.

Q. Do you know how much he did pay you for it? A. I don't know much about it.

Q. Did you get the amount for yours that was paid for it, or did your husband keep it?

A. He gave it to me, I think.

Q. Do you remember how much he gave you?

A. No, sir.

Q. Do you know whether it was \$100 or \$1,000, or any amount between that?

A. No, I don't. The money was used at home; that's all I remember about it.

Mr. GORDON.—We offer in evidence timber and stone land sworn statement of Susan N. Arbuckle, dated May 3, 1902; the notice for publication of the same date; the non-mineral affidavit of Susan N. Arbuckle, also of the same date; the testimony of Susan N. Arbuckle given on final proof, dated July 24, 1902; the cross-examination attached; the testimony of the other witnesses before the land office on final proof; the register's and receiver's certificates,

(Testimony of Susan N. Arbuckle.)

dated July 24, 1902; the patent; and the deed, dated March 20, 1903, made by Charles H. Arbuckle and Susan N., his wife, to A. E. Palmer, consideration \$1600, all to the south half of the southeast quarter, and the northwest quarter of the southeast quarter, and the southwest quarter of the northeast quarter of section 19, township 7 north of range 5 east, Boise Meridian. The deed also contains a description of the southwest quarter of the northeast quarter, and the west half of the southeast quarter of section 27, township 8 north of range 5 east, Boise Meridian.

Mr. BUNDY.—It contains more than that, don't it?

Mr. GORDON.—The northwest quarter of the northeast quarter of section 34, in township 8 north of range 5 east, Boise Meridian.

(Susan N. Arbuckle papers marked Plaintiff's Exhibit No. 66A to 66X inclusive.)

Mr. GORDON.—Q. Did you make any other deed besides the one that is here? Were you requested to make any other deed? A. No, sir.

The EXAMINER.—What is the consideration in the deed?

Mr. GORDON.—\$1600.

Mr. BUNDY.—That is for the two claims. You don't offer any patents because there are none.

Mr. GORDON.—I understand there was no patent issued in this case.

Cross-examination.

(By Mr. BUNDY.)

Q. Mrs. Arbuckle, the matter of paying the lo-

(Testimony of Susan N. Arbuckle.)

cator, Mr. Downs, for his services, and paying the filing fees at the land office, and the advertising fees, and things of that kind, I understand were attended to by your husband? A. Yes, sir.

Q. That is the reason you don't know the exact amounts? A. Yes, he tended to that.

Q. As he naturally would—and the same is true with reference to selling the land; the negotiations were carried on by your husband, were they not?

A. Yes, sir.

Q. Both the negotiations and fixing the price, and collecting the money, all of that was done by your husband for you? A. Yes, sir.

Q. You and Mr. Arbuckle do not keep separate cash drawers in the house for each, do you?

A. No, not all the time; I have my own little purse.

Q. But you and your husband are living together, and working together, and what belongs to one belongs to the other? A. Yes, sir.

Q. And when you make any money it goes to the common fund, except, of course, that you have your own individual pin money?

A. Yes, sir, I had my own individual pin money, that is all.

Q. Mrs. Arbuckle, at the time you filed that first paper in the land office, had you made any agreement of any kind, in writing or verbal, express or implied, by which you had agreed to turn this property over as soon as you got title to the Barber Lumber Company or anybody else? A. No, sir.

(Testimony of Susan N. Arbuckle.)

Q. Had you made any such agreement at the time you made your final proof? A. No, sir.

Q. Did you ever, at any time, prior to the time you sold your land, enter into any agreement by which you had obligated yourself to turn this property over to somebody else at their request?

A. No, sir.

Q. Mrs. Arbuckle, it is charged in the complaint in this action, by the United States, that you, together with some two hundred other good people of this community, entered into a wicked and unlawful conspiracy for the purpose of defrauding the United States. Is that true or false? A. It is false.

Q. And it is stated by the Government here that, for the purpose of carrying out that conspiracy and defrauding the United States, you entered into an agreement with the Barber Lumber Company and the other defendants, by which you agreed to go to the land office, enter some land, testify falsely before the land office, and, as soon as you got title, you would turn it over to the defendants, or to such person as they should direct. Is that allegation true or false? A. False.

Q. You entered this land for your own benefit?

A. Yes, sir.

Q. And solely for your own benefit?

A. Yes, sir.

Q. You didn't have any arrangement with the Barber Lumber Company, or Mr. Kinkaid, Mr. Wells, or Mr. Pritchard, or Mr. Barber, or Mr. Moon, or anyone else as to what you would do with this land

(Testimony of Susan N. Arbuckle.)

when you got it? A. No, sir.

Q. You never talked with any of them about it?

A. No, sir.

Redirect Examination.

(By Mr. KEIGWIN.)

Q. Did you ever talk with anybody but your husband about it? A. No, sir.

Q. And, as I understand, he suggested that you take up this claim, and told you what you could do, and arranged for the sale?

A. Yes, he arranged for the sale.

Q. And you left the matter entirely in his hands?

A. Yes, sir.

(Witness excused.)

[Testimony of Charles H. Arbuckle, on Behalf of the Complainant.]

CHARLES H. ARBUCKLE, produced as a witness on behalf of the complainant, being first duly sworn, testified as follows:

Direct Examination.

(By Mr. KEIGWIN.)

Q. Mr. Arbuckle, do you live in Boise at the present time? A. Yes, sir.

Q. And you were living here in 1902?

A. Yes, sir.

Q. At that time what was your occupation?

A. At that time, along in May, I left here and went to Blaine County to take a hotel there.

Q. That is, you began the keeping of a hotel in May? A. The 15th of May, yes, I think.

(Testimony of Charles H. Arbuckle.)

Q. And before that time, while you were living in Boise, what was your occupation?

A. Well, before that I wasn't doing anything here. I had been to Buffalo the year before. I had been in the employ of the State for two years and a half.

Q. What is your present occupation?

A. At present, I am not doing anything.

Q. Now, in the month of May, 1902, you filed an application to purchase some land under the Timber and Stone Land Act, in the land office in Boise. Do you remember that? A. Yes, sir.

Q. Do you remember from whom you first got the suggestion or the information that you could advantageously make such an entry?

A. I don't remember of getting a suggestion from anyone.

Q. Well, from whom did you get your information as to the possibility of making such an entry?

A. I don't know as I could say that, because I had that right, to take up a claim, and I had heard generally that there was claims being taken up.

Q. Well, then you made up your mind that you would take up one of those claims, did you?

A. Yes, sir.

Q. And how did you proceed to find the land, and select it, and make your entry?

A. Well, I went up to Mr. Wells' office.

Q. That is Mr. John I. Wells?

A. John Wells, yes, sir.

Q. The same gentleman who has been present

(Testimony of Charles H. Arbuckle.)

here this morning?

A. Yes, sir; I went up there and asked him—I had heard that he was locating people, and I asked him if he was.

Q. And he said he was? A. He did.

Q. Did Mr. Wells have an office at that time?

A. At the Pack Building, I think.

Q. What was his occupation then—Mr. Wells?

A. I don't know what it was; he told me he was locating people on timber claims.

Q. For what purpose did he appear to have an office, and what was his ostensible occupation?

A. I don't know.

Q. You don't know what he called himself?

A. No, sir.

Q. How long had you known Mr. Wells at that time? A. I hadn't known him at all.

Q. Do you remember how you came to go to Mr. Wells?

A. I heard that he was locating people. I don't know how I heard it.

Q. It was a matter of common knowledge that he was engaged in that business?

A. I don't know. I heard it in some way.

Q. Well, what did Mr. Wells say to you?

A. He said that he thought he could locate me.

Q. And what did he tell you to do?

A. He said that there was a cruiser or locator up at Placerville, I think, or Centerville, at that time.

Q. Did he tell you who this cruiser was?

A. I think he did. I think he told me that; I

(Testimony of Charles H. Arbuckle.)

understood that they were partners.

Q. Who was it? A. It was Downs.

Q. Patrick H. Downs? A. Yes, sir.

Q. Did you know Mr. Downs? A. No, sir.

Q. Did you go up to the neighborhood of Center-ville to find Mr. Downs? A. Yes, sir.

Q. Who went with you?

A. I think Mr. McDonald and Mr. James were their two names, and my wife.

Q. That is the lady who has just been examined this morning? A. Yes, sir.

Q. And what arrangement did you make about going up there?

A. Well, when I went to see Wells—I don't remember whether I went to see him once or twice; I may have gone the second time—when I went to see him, he said there was a couple of parties that was talking about going up, and that we could possibly—if we went up, we might go up together and have witnesses; they would be our witnesses, as I understood it. The four of us going together he said “It might make it a little cheaper for you if you four go up together, it would be better,” and so I told him that would be satisfactory with me, and he said he would see about it.

Q. And what was the result of his seeing?

A. My recollection is that I went back to see him about the arrangements, and that these men were going and would go a certain day if I would go then; and in the meantime he, I think, had communicated with Downs to see about the timber, and I said to

(Testimony of Charles H. Arbuckle.)

him that I wanted to go and be able to locate when I got there.

Q. You let Downs know when you were coming?

A. Yes my understanding was to see whether they had claims anywhere near Centerville.

Q. How did your party go?

A. We went in a spring wagon.

Q. You paid for it among you?

A. Yes, sir, when we came back, when we stopped at my house as we came back, I asked one of these men that got the team and come up by my house, what they were to pay for the team a day, and he told me, and we kept account of the bill while we were up there, and we paid half of the damage.

Q. You and Mrs. Arbuckle? A. Yes, sir.

Q. When you got up to Centerville, or the neighborhood of Centerville, did you find Mr. Downs there? A. Yes, sir.

Q. Did he proceed to locate you, and each of you, upon claims? A. Yes, sir.

Q. Where did he take you?

A. My claim, my recollection of it is, was about a mile and a half north of Pioneerville; I am not sure about that, but it was something near that, I think.

Q. Did he take you out to this particular claim and show it to you and tell you that was your claim?

A. No, sir, he didn't tell me that. He told me before I went up there that there was a claim up above Pioneerville, and that I could go up and look at it.

Q. He went with you? A. Yes, sir.

(Testimony of Charles H. Arbuckle.)

Q. Did he show you the corners?

A. Yes, sir.

Q. Did he give you a description?

A. I don't remember about the description, just how I got that description. I don't remember that he gave a description of these claims to some one of the party or not, but it seems to me that he did, to take down to Wells.

Q. Well, when you came back to the city did you take it to Mr. Wells?

A. I went up to Mr. Wells' office after I came back, and I know that somebody had the description; I don't remember just who it was.

Q. But at any rate the description was in the hands of Wells?

A. Anyway, before I filed, I know I had the description there, and got it from Wells, as far as my recollection of it goes.

Q. Do you remember who drew your sworn statement for you? A. I don't remember that.

Q. Do you know who went to the land office with you to identify you?

A. Well, I think that Mr. McDonald was there.

Q. And Mr. Wells?

A. And Mr. Wells might have been.

Q. Will you look at this sworn statement, Mr. Arbuckle, and see if that is drawn in your writing?
(Hands witness paper.)

A. It isn't in my writing.

Q. Do you know the handwriting of Mr. Wells?

A. I couldn't say.

(Testimony of Charles H. Arbuckle.)

Q. You don't know whether Mr. Wells drew that or not?

A. I don't know whether he did. He might have done it.

Q. You said you got this from Mr. Wells' office.

A. No, I didn't. The description of the land I understood you to say. Wasn't that the question you asked me?

Q. I understood you to say you got this from Mr. Wells' office. Did you or did you not get it from Mr. Wells' office?

A. I may have got it from there, and I may not have. I don't know who could have drawn that description unless it was Mr. Wells at that time, because I don't know of anyone that I went to, and he may have drawn it. My first impression was that that was drawn in the land office, but—

Q. Now, will you look again at this timber and stone land sworn statement and state whether or not that is your signature?

A. That is my signature.

Q. Now, will you look at the next paper, and state whether or not that is your signature?

A. That is my signature.

Q. Let's take the next paper. That is the testimony of claimant on final proof. Look on the back of that, Mr. Arbuckle; is that your signature?

A. Yes, sir, that is my signature.

Q. Now, the next paper, Mr. Arbuckle; is that your signature?

A. Yes, sir.

Q. Now, this non-mineral affidavit; is that made

(Testimony of Charles H. Arbuckle.)

out in your writing, outside of the signature?

A. No, sir, I don't think so.

Q. Do you know who wrote that, who filled up that non-mineral affidavit?

A. No, I don't. I suppose it was Garrett.

Q. That was filed in the land office. Now, after you had made this original entry or filing, you waited some little time and afterwards made final proof, did you not? A. Yes, sir.

Q. Do you remember the occasion on which you made final proof?

A. I remember making final proof.

Mr. GORDON.—Q. Mr. Arbuckle, you say that you were in the hotel business at that time?

A. I did not, at that time. I had made arrangements at that time to go into the business.

Q. I notice here on your sworn statement, May 3, 1902, where they ask you for your occupation, you say "hotel-keeper."

A. I had been up there once before—saloon and hotel business; that has been my business most all my life.

Q. Did you know Governor Steunenberg during his lifetime? A. Yes, sir, I did.

Q. Did you know him before you made an entry under the Timber and Stone Act? A. I did.

Q. Did you have any business transactions with him?

A. I have never had any business transactions any more than political.

Q. This Governor Steunenberg was Frank Steun-

(Testimony of Charles H. Arbuckle.)

enberg? A. Yes, sir.

Q. That died in December, 1905?

A. Yes, sir, I think that was the time.

Q. And did you ever have any conversation with him with reference to taking up a timber and stone claim? A. No, sir, I never did.

Q. Did you ever talk to him about taking up a timber and stone claim? A. No, sir.

Q. Did you ever receive any money from Governor Steunenberg?

A. Yes, sir, I received one check from him that I remember of.

Q. Do you remember when that was?

A. My recollection is that it was some time before I took up that claim, along, I think, in April.

Q. And how much was that check for?

A. Twenty-five dollars.

Q. And was that the \$25 with which you paid for your location? A. No, sir.

Mr. KEIGWIN.—Q. You paid Mr. Downs \$25 for locating you?

A. I paid him \$50. No, not Mr. Downs—my recollection is that I paid Mr. Wells that money for the two claims.

Mr. GORDON.—Q. Did you ever receive another check from Frank Steunenberg?

A. I have no recollection of ever receiving a check, Mr. Gordon.

Q. Did you receive a check from Frank Steunenberg, dated May 9, 1902, for \$150?

A. I have no recollection of ever receiving that

(Testimony of Charles H. Arbuckle.)

check.

Q. Where did you get the money with which you made your final proof?

A. I brought that money with me from Soldier, the place I was living.

Q. Where did you get it at Soldier?

A. I had some of it when I went there, and I was in business there, and had been making some money.

Q. Did you have this money in the bank?

A. No, sir.

Q. Where did you have it?

A. I had it out there; there is no bank at Soldier.

Q. And did you keep it at home?

A. Yes, sir.

Q. And did you and your wife prove up the same day?

A. Yes, sir.

Q. And she was with you?

A. Yes, sir.

Q. Where did your wife get the money with which she proved up?

A. We had the money together.

Q. That was money that the two of you had saved in your business?

A. It was money, some of it, that I had made, and some we made in Soldier, and money that we had. Whatever one has we both have in our family.

Q. I show you deed dated March 20, 1903, signed Charles H. Arbuckle, and Susan N., his wife, to A. E. Palmer, consideration \$1600, and ask you if that is your signature?

A. Yes, sir.

Q. And is that the signature of your wife?

A. I couldn't swear that it was, but it looks like her signature.

(Testimony of Charles H. Arbuckle.)

Q. And did you acknowledge that deed before Mr. Louis M. Pritchard?

A. Mr. Pritchard was the man that I done business with.

Q. Now, at the time you took up your timber and stone claim, did you know of anybody that was buying claims?

A. No, sir, I think not, at that time.

Q. And how long after you located or made your entry did you learn that there was a market for these claims?

A. After I located? Well, I left here right after I located, and went to Soldier, and never paid any more attention to it until time to prove up.

Q. Well, when did you learn that there was a market for them, that you could sell this claim?

A. I don't know when I learned it. I never paid very much attention to it. I was away from here until November of that year, and I came back here in November.

Q. And when did you learn, after November, that there was somebody purchasing timber claims?

A. I don't know that I learned it. I heard that there was somebody buying timber claims along in the winter.

Q. Did you hear who it was?

A. Well, before I sold I heard that Mr. Pritchard was buying claims.

Q. Did you know whether Mr. Pritchard was buying for himself or for somebody else?

A. I don't know who he was buying for.

(Testimony of Charles H. Arbuckle.)

Q. Did you know whether he was buying for himself or somebody else?

A. I say I didn't know who he was buying them for.

Q. You may have known that he was buying them for somebody else and not know who it was he was buying for. That is what I want to know.

A. I didn't know who he was buying for, or anything about it; only I heard that he was buying claims.

Q. Did you go to see Mr. Pritchard about this?

A. I think I did; yes, sir.

Q. Had you known Mr. Pritchard before this?

A. No, I don't think I had; I think I had seen Mr. Pritchard, but I never had any acquaintance with him.

Q. Do you know who told you that he was buying claims?

A. No, I do not; I don't know that anybody told me—I know I heard it.

Q. And you went to see him about those timber claims?

A. Yes, sir.

Q. Did you tell him you had come to sell them?

A. I went up and talked to him.

Q. Did you sell them that day?

A. No, I think not.

Q. Did he make you an offer for them?

A. I think he did.

Q. How much did he offer?

A. My recollection is that he said he would give me \$800 a claim.

(Testimony of Charles H. Arbuckle.)

Q. How long after that was it that you sold them?

A. I think I talked to my wife a little; I think I had talked to her possibly before about selling, and I think I told him that I would come back if I concluded to sell and bring my wife.

Q. And did you and your wife go to see him?

A. Yes, sir.

Q. And was it on that occasion that you sold the claims? A. Yes, sir.

Q. Did he pay you for them that day?

A. Yes, sir.

Q. Did he pay you in check or cash?

A. In money.

Q. And he gave you \$1600 in money?

A. Yes, sir.

Q. Did you deposit that in the bank anywhere?

A. No, sir.

Q. Did you give your wife her share?

A. I took the money home and left some of it at home, and some of it I carried with me. I never did any business with a bank in my life until two years ago.

Q. That was the only offer of purchase you had for this land, wasn't it?

A. I don't remember of any other offer.

Q. As I understood, you never had any business relations with Governor Frank Steunenberg except what you might call political relations?

A. Governor Steunenberg appointed me to an office here once, political position.

Q. When was that? A. That was in '99.

(Testimony of Charles H. Arbuckle.)

Q. You weren't in office at this time, when you made your entry?

A. No, I was not at that time.

Q. Now, Mr. Wells, Mr. Downs, and Mr. Pritchard, or any of them, did not tell you that they were buying lands when you made your original entry?

A. I have no recollection of them telling me.

Q. Do you know whether they did tell you or not?

A. I don't remember anything about it if they did.

Q. Have you talked to Mr. Downs about this case, this Barber Lumber Company suit, now being tried?

A. I haven't talked with him anything particular about the suit; I have seen him now and then, but never had any talk more than in a general way. I never have had any conversation with him directly on this. I never had any particular conversation with him in regard to this case.

Q. Have you had any conversation with him concerning this suit and the testimony here that wasn't particular?

A. Nothing in regard to my testimony.

Q. Have you talked to him with regard to his testimony? A. No, sir.

Q. Or anybody else's testimony?

A. No, sir.

Q. Have you talked to Mr. John I. Wells?

A. I have talked with him.

Q. About this case?

A. Nothing particular about it, only in a gen-

(Testimony of Charles H. Arbuckle.)

eral way like they are talking out there in the corridors.

Q. Have you talked to Mr. Dennis Thornton about this case? A. I don't know him.

Q. Have you talked to anybody about this case?

A. I have never talked to anyone, only just general conversation in the corridors.

Q. Have you told anybody what you were going to testify to in this case?

A. The only man I told was this special agent in here, and he asked me some questions.

Mr BUNDY.—When was that?

A. That was day before yesterday morning.

Q. Was that before the order was made that these special agents shouldn't interview witnesses?

A. I couldn't say about that. This was day before yesterday, in the forenoon.

Q. Did he ask you to make a statement?

A. Yes, sir, he asked me in his office there.

Q. Had he asked you at any other time to make a statement? A. No, sir.

Q. And you have been on subpoena here for almost two weeks?

A. Yes, sir. That is the first time, up in the hall there.

Q. And did you decline to make a statement?

A. No, sir, I didn't. I went with him, with Mr. Watt.

Mr. GORDON.—I will say for your benefit that after the Court made the order we instructed them ourselves not to discuss it with any of the witnesses,

(Testimony of Charles H. Arbuckle.)

and I don't think they have; I am pretty certain they haven't.

Mr. GORDON.—We offer in evidence the timber and stone land sworn statement dated May 3, 1902, of Charles H. Arbuckle; his non-mineral affidavit of the same date; notice of publication of Charles H. Arbuckle of the same date; the testimony given on final proof, dated July 24, 1902; the cross-examination thereto; the testimony of the other witnesses on final proof; the register's and receiver's certificates, dated July 24, 1902, all to the southwest quarter of the northeast quarter, the west half of the southeast quarter of section No. 27, and the northwest quarter of the northeast quarter of section 34, township 8 north of range 5 east, Boise Meridian, the deed having been offered heretofore, with the statement that no patent has been issued in this case.

(Charles H. Arbuckle papers marked Plaintiff's Exhibit No. 67A to 67H, inclusive.)

Cross-examination.

(By Mr. BUNDY.)

Q. Mr. Arbuckle, you understood that John I. Wells was engaged in the business here in May, at the time you made your original filing, of locating people on timber claims, didn't you?

A. Yes, sir.

Q. And that was the recognized business of a number of people here at that time?

A. As I understood it, yes, sir.

Q. And as you understood it, Mr. Wells and Mr. Downs were copartners engaged in that business?

(Testimony of Charles H. Arbuckle.)

A. No, sir.

Q. Mr. Wells attending to the business of their clients at this end, and Mr. Downs, as cruiser, pointing out the lands?

A. He told me Mr. Downs was his partner, and locating.

Q. So when you did business with Mr. Wells and Mr. Downs it was the same thing?

A. Yes, sir.

Q. Mr. Arbuckle, at the time you made your first application to purchase these lands, had you entered into any agreement, express or implied, in writing or verbal, with John I. Wells, Kinkaid, Steunenberg, the Barber Lumber Company, or anybody else, by which you were to turn over to the defendants or to any of them, or to any person they should name, the title which you might acquire from the Government?

A. No, sir.

Q. Had you made any such agreement at the time you made your final proof? A. No, sir.

Q. It is alleged in this complaint, Mr. Arbuckle, that you, together with a good many other entrymen and entrywomen, entered into a conspiracy with the Barber Lumber Company and the other defendants, for the purpose of defrauding the United States out of certain timber lands. Is that true or false, as far as you are concerned?

A. False, as far as I am concerned.

Q. It is also alleged and charged by the Government that you, for the purpose of carrying out that conspiracy, and for the purpose of defrauding the

(Testimony of Charles H. Arbuckle.)

United States, were induced by the Barber Lumber Company and the other defendants to go before the land office and perjure yourself, give false evidence, for the purpose of acquiring title to lands to turn over to the defendants in this action. Is that allegation true or false? A. It is false.

At this time an adjournment was taken to 2 P. M., at which time court met, the Examiner and counsel for the respective parties being present.

CHARLES H. ARBUCKLE, recalled for further cross-examination, testified as follows:

Mr. BUNDY.—Q. Mr. Arbuckle, you spoke something about a \$25 check, which you said you remembered Governor Steunenberg giving you?

A. Yes, sir.

Q. Did that check have anything to do whatever with your entry of timber land? A. No, sir.

Q. Did it have anything to do with your paying the locator, filing fees, or publishing fees, or any other expense connected with your timber and stone entry? A. No, sir.

Q. Can you tell us what that check was for?

A. Yes, sir.

Q. Please do so. A. I cashed that check.

Q. Do you remember where?

A. My recollection is in the Idanha Hotel.

Q. Cashed it for Governor Steunenberg?

A. Yes, sir.

Q. Simply as an accommodation for him?

A. Yes, sir; he spoke about a fellow wanting some money, and said he wanted to get a check

(Testimony of Charles H. Arbuckle.)

cashed, and I remember it was in the evening, and I asked him how much he wanted, and he said \$25, so I just gave him the \$25 and he gave me a check.

Q. Do you recall any other check that the Governor gave you? A. No, sir, I do not.

Q. Have you heard anything about any other check? A. Yes, sir.

Q. What was that?

A. \$150 check. I was asked that question before the Grand Jury.

Q. Can you remember anything about that check?

A. I do not.

Q. The circumstances connected with it at all?

A. I have no recollection of ever receiving the check. I may have received it, but I have no recollection of it.

Q. Did that check, whatever it was, have anything whatever to do with your making a timber and stone entry, or have any relation to your timber and stone entry?

A. No, sir; in fact I don't remember of ever receiving it, and it seems to me that if I had received the check on that proposition, I think I would have remembered it.

Redirect Examination.

(By Mr. GORDON.)

Q. Are you positive that you did not get a check for \$150 from Governor Steunenberg?

Mr. FRASER.—We will ask the attorneys for the Government, have you got any such check? If you have, produce it.

(Testimony of Charles H. Arbuckle.)

Mr. KEIGWIN.—Counsel for the Government do not feel called upon at the present time to state whether they have or not.

Mr. BUNDY.—I ask the Court to instruct the witness that he is entitled to see the check before he answers any further questions.

Mr. KEIGWIN.—Counsel for the Government state that the purpose of this is to test the memory of the witness.

Mr. BUNDY.—He has already stated, Mr. Keigwin, that he has no recollection of that at all.

Mr. KEIGWIN.—The purpose is to see what his recollection is.

Mr. GORDON.—Q. Are you positive that you did not get a check from Governor Steunenberg, in May, 1902?

A. I am not positive, but I don't recollect anything about it.

Q. Are you positive that you didn't receive a check from Governor Frank Steunenberg in May, 1902, as an advance payment on the entry that you made under the Timber and Stone Act?

A. I am positive that I never had any conversation with Governor Steunenberg in regard to that timber claim, or disposing of it, in May, or any other time.

Mr. KEIGWIN.—Q. Is that what you said before the Grand Jury, Mr. Arbuckle?

A. I don't know exactly what I said, but I think that would be the substance of what I said.

Q. You were asked these questions, I suppose.

(Testimony of Charles H. Arbuckle.)

A. I was asked some questions something along that line.

Q. And you had then no recollection of it?

A. I had no recollection of that check at that time, and I haven't yet.

Q. Since you were placed under subpoena in this proceeding, have you had any conversation about the subject matter of this case with anybody?

A. What do you mean?

Q. About your testimony to be given in this case?

A. You mean, have I discussed what I am going to testify to?

Q. Yes.

A. I talked to that special agent in there.

Q. Have you talked with either of the gentlemen representing the defendants here, Mr. Fraser or Mr. Bundy?

A. As to what I was going to testify to?

Q. Yes. A. No, sir.

Q. Have you talked about any other phases of the case with either of these gentlemen?

A. I don't think I have discussed it very much with either of the gentlemen. I know Mr. Fraser; I have only met Mr. Bundy once or twice.

Q. Have you talked to Mr. Fraser?

A. No, sir, I haven't talked to him about my testimony in this case.

Q. Have you talked about any other features of the case?

A. I don't know that I have talked about any features of it.

(Testimony of Charles H. Arbuckle.)

Q. Tell us what you said.

A. I don't know what I said. I may have said something in a way, but I don't remember anything of any importance that I said to him one way or the other in regard to it. There has been more or less general talk all around here, around those corridors, and around the street; I have heard witnesses discussing it, but nothing with regard to this testimony.

Q. What did they say?

A. Only about the case—one would ask the other one if he had heard it.

Q. Did you talk to Mr. Wells?

A. I believe I said to-day that I talked to Mr. Wells.

Q. Have you talked to Mr. Wells since court adjourned this morning?

A. Just saw him out in the hall awhile ago.

Q. Had some conversation with him?

A. Not in particular; just met him out there.

Q. Anything said in particular about your testimony in this case?

A. I don't remember whether there was anything said about it or not, because I just saw him a minute out there. I don't remember that there was anything said about the case.

Q. Was anything said about these checks, the checks which you were questioned about this morning, as having been supposed to come from Mr. Steunenberg?

A. No, sir, there was nothing said about it.

Q. So that the testimony you are giving here now

(Testimony of Charles H. Arbuckle.)

is the result of your own unaided recollection?

A. My testimony—as I remember, those check stubs were presented to me in the grand jury room.

Q. And you said then just what you have said now?

A. Yes, I said practically the same, or in substance the same.

Recross-examination.

(By Mr. FRASER.)

Q. You have known me for a number of years, haven't you, Mr. Arbuckle? A. Yes, sir.

Q. You generally say "how do" when you see me on the street, don't you? A. Yes, sir.

Q. Have I ever approached you, or attempted to ask you, or find out what your testimony would be in this case at any time, or approached you on the subject? A. No, sir.

(Witness excused.)

[Testimony of John T. Morrison, on Behalf of the Complainant.]

JOHN T. MORRISON, produced as a witness on behalf of the complainant, being first duly sworn, testified as follows:

Direct Examination.

(By Mr. GORDON.)

Q. Your name is John T. Morrison?

A. Yes, sir.

Q. You were at one time Governor of the State of Idaho, were you? A. Yes, sir.

Q. In what years? A. 1903 and 1904.

(Testimony of John T. Morrison.)

Q. For the whole years of 1903 and 1904?

A. Yes, sir.

Q. During your term of office as governor you lived at Boise?

A. Yes, sir.

Q. And during that term did the State exercise its preference right by filing on certain timber in the Boise Basin, in Idaho?

A. Yes, sir.

Q. Do you remember what township this was in?

A. I think it was 6 north, 4 east, Boise Meridian, and also I think it was in one other township adjacent to that.

Q. Do you remember when the plats were filed in the land office here from which you were to make your selection?

A. I think that plat was filed on July 15, 1903.

Q. And how long after that did the State have to exercise its preference?

A. It had sixty days preference right.

Q. Do you remember the date the State exercised that right?

A. I think their filing was made on the 12th of September.

Q. What day of the week?

A. I think it was Saturday.

Q. Do you remember what hour of the day?

A. I do not.

Q. Will you state whether or not the selection that the State was to make was kept secret by you until the filing of the plat designating the land that the State had selected?

Mr. BUNDY.—I object to that as incompetent,

(Testimony of John T. Morrison.)

irrelevant, and immaterial; you don't ask him whether he kept it secret.

Mr. GORDON.—That is what I did ask him.

A. I think so. Of course the selection was made by the State Land Board, by the clerk of the board, and up to the time he made his filing the exact lands that were to be selected might be changed, and so far as the exact description goes, I think we could say that it was not known to anyone until the day of the selection.

Q. Do you know of any effort or endeavor made by anyone to learn what land the State was to select?

Mr. BUNDY.—That is objected to as calling for efforts made by anyone, unless it is some party to this lawsuit.

Mr. GORDON.—He can answer whether he does or not, and then I can ask him who.

A. Yes, sir.

Q. Who?

A. There was an effort made by Mr. Borah.

Q. What Mr. Borah? A. W. E. Borah.

Q. How long before the State made its selection? Was Mr. Borah a practicing attorney then at this time? A. Yes, he was.

Q. That is the same W. E. Borah who is now Senator Borah? A. The same person.

Q. Will you state what effort he made to learn what lands would be selected by the State?

Mr. BUNDY.—That is objected to as incompetent, irrelevant, and immaterial, and calling for a conversation with a person not a party to this action.

(Testimony of John T. Morrison.)

A. Mr. Borah came to my office at the State Capitol before the State had decided as to what lands it would select—the exact date of that visit I am in doubt about—but he asked me if the State intended to make selections in the Basin country under the survey that had been recently reported, and I told him that it intended to make some selections there. He afterwards came back after we had—I will say in that connection, first, that he demurred to our making any selections in there, and wanted to know if it would not be possible to waive any rights which we had there, and our conversation revolved around that request. I took the position that the State couldn't waive any of its rights, as it was behind in its selections.

Q. Did he give any reason for the State waiving its rights at that time?

A. I don't recollect any particular reason that he gave.

Q. Did he ask what the area was of the land the State anticipated taking?

A. At that time, of course, we didn't know what we would take, what the area was, and he made the request that if we did make a selection there that we would make it as small as possible. At that time our cruisers had not reported, as I recollect, and afterwards he came to the office, after we had a report from the cruisers whom we sent in there early in June, and from that report we had decided to take, as I remember now, approximately four thousand acres; and that fact was reported to Mr. Borah, and I think

(Testimony of John T. Morrison.)

that the lands that we were to select, or had thought of selecting, were checked off on the plat there in the office, and he wanted to know if we couldn't reduce that selection.

Q. You said about four thousand acres?

A. That is as I recollect it now. I do not speak accurately with reference to the acreage.

Q. Did he express himself as to whether or not he thought that was too much for the State to select in one section?

Mr. BUNDY.—We object to that as incompetent, irrelevant and immaterial, and as leading and suggestive.

A. As I say, he objected to our taking so much land.

Q. Well, did you know who Mr. Borah was representing, if anyone, at that time?

A. I think I knew. I don't recollect anything that Mr. Borah said to me at this time that would warrant my saying that, but I know whom he represented.

Q. Whom did he represent?

A. I understood that he represented the Barber Lumber Company.

Q. Did he ever tell you that he represented the Barber Lumber Company?

A. I don't recollect that he did, but Mr. Borah testified to that in his own case, said that he told me that he represented the Barber Lumber Company people.

Q. Do you know how many times Mr. Borah came

(Testimony of John T. Morrison.)

to see you with reference to the State selection before you made that selection?

A. I remember but the two times.

Q. Did you know Frank Steunenberg, the ex-Governor, at that time? A. Yes, sir.

Q. Did he come to see you with reference to the selection of the State lands?

A. I think not—not with reference to any selections.

Q. Well, did he ever come to see you with reference to the selling of any of the State lands?

A. Yes, a number of times.

Q. Do you remember when he first came to see you?

A. I don't remember the date, but I think it was in 1904.

Q. Did he tell you who he represented?

Mr. BUNDY.—We object to that as incompetent, irrelevant and immaterial. We don't understand that the State lands are involved here.

A. I don't remember that he stated whom he represented.

Q. Did you know who he was representing at that time? A. I did.

Q. Who was he representing?

Mr. BUNDY.—We object to that as incompetent, irrelevant and immaterial, and asking the witness to testify to a conclusion not based upon facts shown.

A. He was representing the Barber Lumber Company.

Q. Did he come alone on these occasions?

(Testimony of John T. Morrison.)

A. Not always.

Q. State any occasion that he brought anyone with him.

A. Mr. Chapman was there once with him—I think more than once.

Q. Who is Mr. Chapman?

A. Mr. Chapman, as I understand, was the manager of the Barber Lumber Company.

Mr. BUNDY.—This was in 1904?

A. Yes, sir.

Mr. GORDON—Q. And state what their business was.

Mr. BUNDY.—That is objected to as incompetent, irrelevant and immaterial, unless it relates to some of the land involved in this action.

A. They were seeking to have the State sell the lands which it held in the Boise Basin, and came in connection with an offer which the Barber Lumber Company people had made, in a tentative way, for the timber.

Q. Did anyone else ever come to see you as representatives of Mr. Barber, or the Barber Lumber Company, about this timber?

A. Well, I don't know that they came specifically for that purpose; Mr. Borah at one time brought Mr. Barber and Mr. Moon and Mr. Carson up and introduced them in the office. I think Mr. Chapman was there at the time, and that was more in the nature of a social call, but certainly there was some reference made to the timber in the Basin while they were there, and Mr. Barber at one time spoke to me

(Testimony of John T. Morrison.)

about making the sale, and expressed the hope that it could be made, that the company could get it, having more particular reference to a sale under a plan which they seemed to have had under discussion with Mr. Pinchot.

Q. This was Mr. James T. Barber?

A. It was the president of the company.

Q. And this Pinchot that you speak of is Mr. Gifford Pinchot? A. Gifford Pinchot.

Q. Did Mr. Cobb ever come to see you as representing the Barber Lumber Company.

Mr. BUNDY.—That is objected to as asking this witness to testify from hearsay, and as asking him to testify as to a conclusion as to whether Mr. Cobb was representing the Barber Lumber Company.

A. I don't know as to Mr. Cobb representing the Barber Lumber Company. He came to me a number of times urging that the sale be effected to the Barber Lumber Company of the Basin timber.

Q. What Mr. Cobb was that?

A. Calvin Cobb, one of the proprietors of the "Statesman."

Q. Did he show you a letter at any time when he made a call on you with reference to this business?

Mr. BUNDY.—We object to all this as incompetent, irrelevant, and immaterial, Mr. Cobb not having been shown to be a representative of any of the defendants.

A. I believe Mr. Cobb did show me a letter in connection with the matter, but my recollection of that is very dim. I remember a letter, and it had

(Testimony of John T. Morrison.)

some bearing on the question, but I couldn't tell you what its lines were now.

Q. Was it something to this effect, that it was a letter from Mr. James T. Barber, addressed to Mr. Calvin Cobb, and was to the effect that Mr. Barber had been advised by his attorney, which you understood was Mr. Borah, that it was useless to do business with you with reference, or to try to do business with you with reference to the purchase of these lands, and solicited Mr. Cobb to see if he couldn't use his influence with you to have you sell that land, as a personal favor to Mr. Cobb?

Mr. BUNDY.—It appearing from the question asked that counsel is reading from a paper, counsel for the defendants request at this time that if counsel for the plaintiff are in possession of any such letter that it be shown to the witness, and we object to the question for the reason that it is leading and suggestive to the witness, who has already testified that he doesn't recall the contents of the letter.

Mr. GORDON.—We will state that we haven't such letter.

A. The letter, since you refresh my memory, was to that effect.

Q. Was the land that the state selected at that time sold to the Barber Lumber Company?

A. It was not.

Cross-examination.

(By Mr. BUNDY.)

Q. Governor Morrison, you have been interrogated here largely with reference to some effort

(Testimony of John T. Morrison.)

which was made by the Barber Lumber Company to buy certain of the State lands in the Basin. Those negotiations continued over a considerable space of time, did they not?

A. Most of the year 1904, I think.

Q. And as a matter of fact they have been negotiating ever since, haven't they?

A. I understand that the negotiations were continued with my successor.

Q. And it was a matter that was very generally discussed here in Boise and vicinity, with reference to the policy of the State selling that land to the Barber Lumber Company, as an inducement to them to build a plant for the purpose of manufacturing and building a railroad to it?

A. There was considerable discussion on the subject, and it appeared in the papers. I remember reading a discussion in the papers about it. However, the plant was built before this.

Q. And you have told of one or two people that have called on you. There were a great many other people took it up on the same lines. It was a question of the policy of the State, was it not?

A. I don't recollect any person coming to me personally with reference to the sale of those lands except those whom I have named.

Q. These negotiations for the purchase of the State lands were in the usual course of business, and open and above board? You don't mean to imply that there was anything surreptitious?

A. I think not. I think it was a proposition

(Testimony of John T. Morrison.)

which they made, and which they were anxious to have the land board accede to, which, in my judgment, was impossible under the laws of the State, and they had, to some extent, induced the interest of Mr. Pinchot to take up, as he called upon me, and try to emphasize the idea of making that sale.

Q. Mr. Pinchot, among others, was of the opinion that it would be a good plan for the State to sell, was he not?

A. I don't know that he emphasized that idea. Mr. Pinchot was interested from the forester's standpoint, and explained what kind of a proposition he was about to make to the Barber Lumber Company.

Q. Now, that proposition was, in substance, that the Barber Lumber Company would buy that timber from the State, pay a certain price, and would log it under the rules and regulations of the Department of the United States having in charge the forestry, Mr. Pinchot's department. In substance that was it, was it not?

A. With some variations. The proposition made was to give a flat price of \$10 an acre for the fee for the holdings of the State in the Basin. Mr. Barber explained to me that he would be able to make an arrangement with the Department whereby the Department would take—the land would revert in the Government, and for that fee he would get certain timber from other Government lands, and, as a result, the whole section of the country would come under the forestry service, and be timbered under

(Testimony of John T. Morrison.)

the direction of the Forest Department, and Mr. Pinchot explained the proposition in about the same way, and his interest was to get as large an area as possible under the direction of the forest service.

Q. But in connection with that, didn't Mr. Pinchot advise, in a personal way perhaps, the advisability of the State making that sale?

A. I am inclined to think that Mr. Pinchot did so. Now, I don't pretend to give the exact conversation between Mr. Pinchot and myself.

Q. These State lands that you are testifying about are none of them entered under the Timber and Stone Act; you understand they are not involved in this litigation at all?

A. I understand that those selections the State made are not involved in this controversy.

Q. Then these negotiations began while you were governor, in 1904, and continued during your term?

A. It is possible, Mr. Bundy, that they began late in 1903, and extended mostly over 1904.

Q. Whenever they began, those negotiations related to the purchase of State lands, and consisted of negotiations back and forth?

A. Yes, sir.

Q. They were all open and above board, and were discussed in the governor's office and State board and newspapers, and elsewhere in this community?

A. Not all the negotiations were before the State Land Board.

Q. There was no reason why they shouldn't be?

A. I am inclined to think there was some propo-

(Testimony of John T. Morrison.)

sition made to me that would not have come before the State Land Board.

Q. Was that proposition relating to the purchase of State lands? A. Yes.

Q. And had no reference to this selection?

A. None whatever.

Q. And the purchase of State lands that were carried on during your term of office, and subsequently, related to lands other than those which you have testified to here about the State having selected on September 12, 1903?

A. Related to those lands, and also to other lands.

Q. Related to these lands as well?

A. Yes, sir.

Q. With reference to those selections, when Senator Borah called on you with reference to those, did he not state to you, in substance, that the reason he thought the State ought not to select lands there was that it would have a tendency to prevent the building of a railroad through that country?

A. I don't recollect that.

Q. Didn't he state to you, in substance, that, speaking as a citizen of Idaho, he thought it was desirable that this company, that it would have to have a certain amount of timber before they could afford to build a railroad, and they ought not to be interfered with in their operations if they were willing to pay a fair price?

A. I don't recollect any such conversation. As I say, I don't recollect that Mr. Borah identified himself with the interests of the Barber Lumber Com-

(Testimony of John T. Morrison.)

pany at that time. I know that he admitted in his own defense that he did talk to me to the effect that he represented the Barber Lumber Company. Now, as to what he said about that I don't recollect.

Q. I don't know the exact language, but he gave some reason for urging the State not to select that particular land? A. He probably did.

Q. Wasn't that the reason he stated?

A. I didn't say it was.

Q. I remember that Senator Borah testified once that that was the reason he gave, or did you hear that part of it?

A. I don't remember that. I think, though, that that was his testimony.

Q. Now, this plat was filed in 6-4, open to entry, on July 15th, and prior to that time you had your cruisers out?

A. Our cruisers got in on the land about the 8th of June, and reported back about the 16th of June, I think.

Q. Were they out subsequent to that?

A. Yes.

Q. When did the cruisers finally finish their work?

A. I couldn't give you the date. They went up on two different occasions, as I remember.

Q. Give us approximately the date—how long before September 12th they had concluded their work?

A. They had practically concluded their work before the middle of July.

Q. Did they make a report of any kind to the State board or to you? A. Yes.

(Testimony of John T. Morrison.)

Q. Was that report on file in the land department?

A. I have been unable—I have made a search a number of times for the plats, and have been unable to find any of them in the land department.

Q. Do you know where they went to?

A. I do not. I know that the tracings which the land department got from the surveyor general were in my office during the time that the cruising was being made. Now, there were some lead pencil plats which the cruisers had for their own guidance, and which were reported, and which were in my office, and I don't know what became of those. I think they were destroyed, but the plat was returned to the office of the clerk of the land board shortly after the middle of July.

Q. Then did the clerk of the land department have the necessary information to determine what the cruisers had recommended?

A. I think so.

Q. Was that in the form of a plat or official report, or anything that was on file?

A. No, he simply took the blanks necessary for filing in the land department here, and filled out those blanks and brought them in to me, and I signed them, and then came down here and filed them.

Q. From what did he get that information that he filed in the land office?

A. I took it from the cruisers.

Q. Where are the reports of the cruisers?

A. That is what I say I don't know.

(Testimony of John T. Morrison.)

Q. Who were the cruisers for the State at that time?

A. J. B. Lafferty was one, and John Griffith, I think, were the two cruisers that cruised that land.

Q. Do you know where they are now?

A. Mr. Lafferty is superintendent of the Weiser Forest Reserve, and Mr. Griffith lives over on Snake river about Warm Springs valley.

Q. So that the information as a result of the cruising which finally determined these selections was in somebody's hands from July 15th practically up to the time the selection was made?

A. So far as it was determined. That, of course, was always subject to change up to the very time the selection was filed. At the time Mr. Borah was last in my office, the plats were approximately made up. There were some additional lands included after that, and I think that he saw the plat at that time, and I don't know but that he got a plat.

Q. Did that plat show the lands which had then been determined to be selected?

A. Yes, sir.

Q. Can you tell about when that was?

A. That was some time after the 8th of June and before the middle of July.

Q. Can you tell us what changes were made in the State selections after that time and before the final filing?

A. Simply some additional lands to the west.

Q. How much, do you remember?

A. Possibly—I couldn't tell you accurately—just

(Testimony of John T. Morrison.)

a couple of hundred acres.

Q. After that there wasn't any more cruising done, or any more information brought to the land department, I suppose?

A. I think that the cruisers went back and verified the work.

Q. Do you remember when they did that?

A. No, I did not.

Q. But in any event, after this first approximate plat had been made up, there was no further information furnished to the department by way of new estimates?

A. As I say, the cruisers I think went back the second time.

Q. When did they go back, do you remember?

A. I couldn't say exactly.

Q. When did they conclude their second trip?

A. I couldn't tell you.

Q. Was it in July?

A. I think it was in July, but I wouldn't say absolutely.

Q. Your testimony is that they had practically concluded it by July 15th. Do you mean that subsequent to that they went back and did this checking, or does that include both the original and checking?

A. If I may explain just what the situation was, perhaps I can make it clear. We were advised, possibly as early as March, that the survey had been made and the plats received were in the Government land office. We were unable to get into the field until

(Testimony of John T. Morrison.)

in June. Our cruisers first got into the field about the 8th of June, and they reported back about the 15th or 16th of June, made their first report, and that report showed approximately four thousand acres, as I remember, that they thought it would be wise to take. Afterwards they went back into the field—the exact date of which I am unable to give—and made some additional returns, and there were some additional lands added. Now, the original tracing which the land department had from the Government office here was in my office up till about the middle of July. The way I fix that date is this: Mr. Gibson, who was Secretary of State, had a leave of absence, was in the east, returning home about the middle of July. Shortly after he came back, almost immediately, he came in to ask me about the plats, indicating that certain parties wanted to know what lands we were going to select, and after he left the office I took the plat. I had had it in the office in order to keep it under lock and key—I took it in and gave it to the clerk of the land office. I don't remember having seen that plat after that, nor do I remember any dates, after the return of June 15th or 16th, when the cruisers were in the field, but my recollection is that they were in a second time and made a subsequent report.

Q. That is the date that I want to get, the second report.

A. I can't give you that.

Q. Was it in July?

A. I think it was in July.

Q. But what part of July you couldn't say.

(Testimony of John T. Morrison.)

A. I wouldn't say positively as to that date; I wouldn't say absolutely that it was in July, because our cruisers were going into different sections of the country, and sometimes they would come back that way and do a little work as they came back.

Q. At the time this plat was shown Senator Borah in your office, had they made their subsequent report then?

A. I think not. I think the additions were made to our selection after Mr. Borah was in there. As I say, he protested against our taking as much as four thousand acres, which I remember was the amount we had selected when he was in there at that time. It was not cut down, but increased to some extent after that. I wouldn't pretend to give you the exact amount of increase, or the date when that additional data was returned.

Q. Whenever it was returned, the original plat would be changed to conform to the recommendations?

A. Yes, sir.

Q. And that plat is the one that is lost?

A. Well, let me explain about that plat. The plat, of course, belongs in the land office here, and we had simply a tracing from the plat which the clerk, or the cruiser probably, came down here and traced off, simply for his guidance, and that tracing was in my office for a time, and, as I say, that was returned to our State land office shortly after the middle of July.

Q. After the cruisers made their last and final report, the subsequent report, then in your land de-

(Testimony of John T. Morrison.)

partment there would have been prepared, would there not, something to show what lands they had recommended and what lands the State was going to take, either by way of plat or some other way?

A. Not necessarily, because the cruisers would go in and sit down with the clerk of the land department and simply make up the list.

Q. Who finally decided which lands the State would select?

A. That was largely with the clerk of the land department, of course, with the advice of the members of the board. I will tell you the basis upon which we were giving that matter our consideration. We aimed not to take any land that would not estimate at least \$10 per acre, at \$1 a thousand stumpage. The amount was increased by taking in some lands that estimated less than that afterwards.

Q. Did the State board have to take, or did they take, some official action when they finally authorized somebody to file the selections in the United States land office?

A. No official action, except that the filing was made by the clerk and the chairman of the board; I think the chairman of the board signed the filing.

Q. Who was the chairman?

A. I was the chairman.

Q. Do you know when that was signed?

A. That was signed just before the filing was made. The clerk prepared, simply as a clerical piece of work, prepared the lists, and brought them in and I signed them.

(Testimony of John T. Morrison.)

Q. Who told the clerk which particular pieces of land to take, or did he get that from the estimates?

A. He gathered that from the reports verbally made by the State land cruisers and in conference with the members of the board. Now, the lands that came up to the estimate on that first cruise were all included, and subsequently we thought it would be good policy to take in some additional lands, and we took in some that didn't come up to the \$10 basis, but were the best of what was left, and whatever in addition to the four thousand acres which I speak of as the approximate amount in that estimate, were so added. The list will show the amount of land selected; I don't remember.

Q. All these additional selections were based upon the reports of the cruisers?

A. Nothing except what the cruisers told us.

Q. And the cruisers had completed their work, to the best of your recollection, some time in July?

A. I think they had finished; it is possible, I say, that they may have gone back and verified some of their work.

Q. Even if they did go back and verify, they finished their verified statement some time in July?

A. I don't remember as to that.

Q. What is your best recollection as to the time?

A. I have no recollection about it.

Q. You say they first went out June 8th and got back June 16th?

A. Yes, I remember about that, because I looked it up.

(Testimony of John T. Morrison.)

Q. And you say you think they went out after that and verified it?

A. I think to some extent they did.

Q. And you said your recollection was some time in July, but the date you can't state?

A. I wouldn't say positively it was in July; it may have been later.

Q. But your best recollection would be in July—or is it later?

A. I didn't speak accurately about that.

Q. Give us your best recollection?

A. I have given you my best recollection.

Q. Will you say whether it was in July or August?

A. I won't say; what I think isn't testimony either.

Q. I should think it would be better than somebody else's guess. This was all being done under your direction?

A. Not entirely under my direction.

Q. You were chairman of the board?

A. Yes, sir.

Q. Looking out for the State's interests?

A. Yes, sir.

Q. And the cruisers were, to that extent, under your direction, were they not?

A. Yes, sir, but I didn't have my mind or my hand on all the details of the work.

Q. Who was clerk of the board?

A. Norman Jackson.

Q. Where is he now?

(Testimony of John T. Morrison.)

A. Mr. Jackson died about a year ago.

Q. In the land department would there be a record kept of any of the meetings of the State board?

A. Whenever they had a meeting there was a minute.

Q. And did they have a regular record for that purpose?

A. Yes, sir.

Q. Which would be in the custody of the clerk?

A. Yes, sir, it would be reported in the books up there.

Q. But your recollection is that there was no action taken in selecting any of these lands at any official meeting?

A. I think not.

Q. You don't mean to imply, do you, Governor Morrison, in your evidence here—I don't think it would appear from your evidence, but it might from the questions, that Mr. Barber and Mr. Cobb, that these gentlemen came to you in any improper way?

A. I don't represent anything; I simply testify as to what occurred, Mr. Bundy.

Q. And the only time Mr. Barber or Mr. Carson called on you was largely a social call, although this matter was discussed?

A. The first time when they were all there I think it was largely in the way of a social call.

Q. Was Mr. Barber there again?

A. I think once again.

Q. What was that about?

A. It was at that time I think that he spoke to me, as I recollect, about the sale of the State lands to the Barber Lumber Company.

(Testimony of John T. Morrison.)

Q. Was that the time this Pinchot matter was discussed?

A. It was at that time, as I recollect, that Mr. Barber—I had made the remark “I don’t see how this can be consummated,” and he said he thought he could take care of the Government part of it at Washington. I understood it was through some connection with Mr. Pinchot; I don’t know what the connection was.

Q. But you understood at that time, did you not, that Mr. Pinchot and Mr. Barber had had several conferences, and as far as Mr. Pinchot was concerned, I think he wanted to make a sample case of this cutting of the timber by the Barber Lumber Company?

A. I think that was Mr. Pinchot’s idea. Now, as to what conferences he had with Mr. Barber I don’t know.

Redirect Examination.

(By Mr. GORDON.)

Q. Governor, you said something about a proposition being made to you that wasn’t intended for the State board, in response to some question that was asked you by Mr. Bundy. What was the proposition?

Mr. BUNDY.—By whom?

Mr. GORDON.—Whatever the question was. Let the stenographer look back and find that question. (Question and answer read back by stenographer as follows: Q. There was no reason why they shouldn’t be? A. I am inclined to think there was some

(Testimony of John T. Morrison.)

proposition made to me that would not have come before the State Land Board.) By whom was the proposition made, Governor?

Mr. BUNDY.—I object to that as incompetent, irrelevant and immaterial, and as asking for hearsay evidence as to some undisclosed person.

Mr. GORDON.—Q. What was the proposition?

Mr. BUNDY.—Before he answers that, I would like to ask the Governor if the proposition related to lands owned by the State of Idaho.

The WITNESS.—I think the word proposition there is not a very happy word. I ought to have used the word suggestion; I would like to change it to that effect, to change the word to suggestion instead of proposition.

Mr. GORDON.—Then I will change my question. Was the suggestion relative to purchasing lands from the State of Idaho, or in that connection?

A. It was with reference to and had a bearing upon the sale of State lands.

Mr. BUNDY.—That is objected to as incompetent, irrelevant and immaterial, and not in response to any issue made by the pleadings in this case.

A. (Continuing.) Mr. Steunenberg had, as I testified, come to the office a number of times with reference to this proposed sale, and it was this difficulty, among other things, in the way of effecting the sale on the lines proposed to which I directed his attention quite emphatically; it was that the timber on the lands estimated more in value than the price which was offered, and that, while this was a blanket offer

(Testimony of John T. Morrison.)

made for all of the lands, I took the position, however meritorious it might be, that the state could not make a sale of its lands in fee in any event for a price less than the estimated value. I called his attention to the fact that these estimates were made by appraisers who were sent into the field under oath, and that their returns must be accepted. They had questioned the estimates which we had made, and asked to have others sent into the field and proposed, as I recollect, that we ought to select somebody else to make the appraisement than those whom we had sent in. There was considerable controversy in the board over the matter, and finally we did select another set of appraisers and sent them into the field there and they made a return. It was during the discussion of this proposed appraisement that Mr. Steunenbergh had the temerity to tell me to direct that this appraisement be made \$10 an acre. That is the suggestion to which I refer.

Q. What was the estimate made as to the value of the lands, if you remember?

A. I couldn't remember the exact estimate; it was between \$13 and \$14 for the timber alone.

Q. That was per acre?

A. Per acre, yes. Those appraisements ought to be on file in the State land office, and I think are.

Q. You, in response to a question by counsel for the defense, said that you had learned or concluded that someone was trying to find out what selection of land the State was going to select, and for that reason you locked the plats up, put them under lock

(Testimony of John T. Morrison.)

and key. You made some such statement as that?

A. I don't recollect having so testified.

Q. You said somebody came to you and made some suggestion, that one of the board, a Mr. Gibson, or something like that, had returned from his vacation, and had made the statement that someone was trying to learn what the State was selecting, and for that reason you put them under lock and key.

Mr. FRASER.—Part of that is correct; he didn't say that after Mr. Gibson came in he put them under lock and key.

Mr. GORDON.—What is the fact, Governor? Who was it that was trying to find out what land the State was selecting, if you know?

Mr. BUNDY.—That is objected to as incompetent, irrelevant and immaterial, and not responsive to any issue made by the pleadings in this case.

A. Mr. Gibson came back in July, and shortly after he came back he came into my office and asked about the plats, stating that some parties wanted to know about the selection and would like to see them, or words to that effect. He knew that I had the tracing in my desk, and I believe I stated at that time that I had it in my desk under lock and key. I think that is what you refer to. After that I took the plat or tracing and gave it to the clerk of the land department.

Q. And I understood you to say that the plat which showed the selection that the State intended to make was completed some time in July, with the exception of two or three hundred acres that were

(Testimony of John T. Morrison.)

added to it between then and the 12th of September.

A. It was approximately complete, and I think that whatever additional, in excess of the four thousand acres, which I remember as about the amount that was first decided upon, was made after that.

Q. And that was added to that plat?

A. Added to the lands designated on that plat, and, as I remember, in June the plat in my office showed approximately the lands that were finally selected, with that exception.

Mr. KEIGWIN.—Q. Was it customary or usual, during your incumbency of the office of Governor, for individuals to approach you or members of the State Land Board for the purpose of finding out what proposed selections the State was going to make?

A. I never knew of but the one instance.

Q. Were the deliberations and conferences of the board with reference to the proposed selections regarded as confidential?

A. As between the members of the board?

Q. Yes, outside, as between the members of the board on one side and the outside public.

A. The outside public were not supposed to know or to have any knowledge of the intention of the State Land Board, and our purpose was to keep the knowledge from the outside, because we were constantly up against filings, or squatters' filings, made by squatters, or squatters having gone on the lands and claiming preferential rights.

Q. In the negotiations to which you have testified

(Testimony of John T. Morrison.)

looking to a sale of these lands to the Barber Lumber Company you have, I think, mentioned the fact that it was suggested to you, as an inducement to make this sale, that the Barber Lumber Company intended to erect a valuable milling plant in this neighborhood and build a railroad. I am right about that, am I not; that is what you testified to?

A. That was the argument used by Mr. Cobb.

Q. Has that milling plant been built?

A. The milling plant was built before these negotiations.

Q. Do you remember when it was built, approximately the year?

A. As I understand the question, the argument was made that the Barber Lumber Company had a large plant here, and wanted to maintain it, and wanted to build a railroad. That argument was used, but when these negotiations came up, as I remember, the Barber Lumber Company's mill was either complete or nearly complete.

Q. What I want to get at is the year in which it was built.

A. I think it was completed in 1903.

Q. Do you know anything about the extent or value of that mill?

A. No, I couldn't speak accurately. It is a fine plant.

Q. You have no idea what it cost?

A. No, sir.

Q. And the railroad is not yet built?

A. There is no railroad except from the town to

(Testimony of John T. Morrison.)

the plant.

Q. How far is that?

A. Five or six miles. I don't mean to say that the Barber Lumber Company built that railroad; I think the railroad company built it, but I don't know.

Mr. BUNDY.—I think you are in error about that. It was a joint proposition. The railroad company furnished the rails.

(Witness excused.)

Mr. FRASER.—Counsel for the defendants at this time move to strike out all the testimony of the last witness, John T. Morrison, for the reason that it is incompetent, irrelevant and immaterial, has no bearing whatever on any issue involved in this suit, does not involve any of the lands described or mentioned in the bill of complaint.

[Testimony of Louis L. Sharp, on Behalf of the Complainant.]

LOUIS L. SHARP, recalled by the complainant, upon being examined, testified as follows:

Direct Examination.

(By Mr. KEIGWIN.)

Q. Mr. Sharp, have you found any of the papers which were referred to in your direct examination, and which we undertook to produce in connection with your testimony? A. Yes, sir.

Q. You have them with you, have you?

A. Yes, sir, I have all that I could find.

Q. Will you take them separately and indicate what each paper is and hand them to the Examiner.

A. One is the notice issued by the receiver of the

(Testimony of Louis L. Sharp.)

United States Land Office, Boise, Idaho, dated July 22, 1903, containing the charges on timber and stone entry No. 227, of Abel E. Hunter, Centerville, Idaho.

(Marked Plaintiff's Exhibit No. 68A.)

And the second is a notice from the receiver of the United States Land Office, Boise, Idaho, dated December 9, 1902, containing the charges against timber and stone sworn statement No. 225, of Albert P. Nugent.

(Marked Plaintiff's Exhibit No. 68B.)

A notice issued by the receiver of the United States Land Office, Boise, Idaho, dated December 9, containing charges against timber and stone sworn statement No. 226, of Arthur Anderson.

(Marked Plaintiff's Exhibit No. 68C.)

A notice of the receiver of the United States Land Office, Boise, Idaho, dated July 22, 1903, containing charges against timber and stone, sworn statement No. 228, of James T. Ball.

(Marked Plaintiff's Exhibit No. 68D.)

A letter dated June 26, 1903, from the receiver of the United States Land Office, Boise, Idaho, addressed to the Commissioner of the General Land Office, in relation to the application of Harvey H. Wells, for hearing on his timber and stone application No. 224.

(Marked Plaintiff's Exhibit No. 68E.)

And another letter of the same character, dated August 26, in relation to timber and stone entry of James T. Ball.

(Marked Plaintiff's Exhibit No. 68F.)

(Testimony of Louis L. Sharp.)

A certified copy of the complaint of C. R. Poncia, addressed to Fred T. Dubois.

(Marked Plaintiff's Exhibit No. 68G.)

Decision of the register and receiver in the Harvey H. Wells case, dated April 9, 1904.

(Marked Plaintiff's Exhibit No. 68H.)

And a decision of the register and receiver in the Abel Edward Hunter case, dated April 9, 1904.

(Marked Plaintiff's Exhibit No. 68I.)

And the original record of the proceedings in the case of United States vs. Arthur Anderson et al.

(Marked Plaintiff's Exhibit No. 68J.)

And the decision of the Secretary of the Interior, dated May 24, 1905, in the case of United States vs. James T. Ball.

(Marked Plaintiff's Exhibit No. 68K.)

And a decision of the Secretary of the Interior, dated May 24, 1905, in the case of United States vs. Abel Edward Hunter.

(Marked Plaintiff's Exhibit No. 68L.)

Mr. BUNDY.—Have you got the protest?

A. No, we couldn't find it.

Mr. BUNDY.—That is the important thing. These other things are not very important.

Mr. KEIGWIN.—My understanding is that we are producing all the papers which can be found, and that the witness will testify, or has testified, that he has made search in the land office.

Mr. BUNDY.—We want the report and the protest.

Mr. KEIGWIN.—These Nugent-Hunter entries?

(Testimony of Louis L. Sharp.)

Mr. BUNDY.—The report from the Basin. Your report which you made here, as you testified, was sent to Washington?

A. Yes. There was two protests filed.

Q. I am speaking of your report.

A. Yes, it went to Washington.

Q. And you haven't produced it?

A. No, I haven't produced it.

Q. And there was a protest.

A. Yes, I have produced one of the protests.

Q. There was a regular formal protest filed with the Department, signed by the names of sixty-eight people. That you haven't produced?

A. No, sir, we have made search of the records here.

Q. It wouldn't be here; it would be in Washington.

A. No. I don't think so; they are supposed to have sent all the papers out here.

Q. It isn't here so far as you know?

A. No, it isn't here.

Mr. BUNDY.—We ask that the evidence of this witness be struck out until they produce the papers, namely, his report to the Department, and the protest.

Mr. KEIGWIN.—May I ask how many papers which were mentioned in the examination in chief of this witness are not produced?

Mr. BUNDY.—All of them. These are nothing but the land office files that any of us can see at any time.

(Testimony of Louis L. Sharp.)

Mr. BUNDY.—What are the papers that you say are missing?

Mr. BUNDY.—Mr. Sharp's report to the Department, and a protest relative to which he testified, signed by sixty-eight people in the Basin.

Mr. KEIGWIN.—As I understand, your motion is that the entire testimony of this witness be stricken because of Mr. Sharp's failure to produce the papers?

Mr. FRASER.—His evidence as to the contents of these particular documents which have not been produced.

Mr. KEIGWIN.—Hasn't he been asked about a search he has made?

Mr. FRASER.—Yes.

Mr. KEIGWIN.—What did he say?

The WITNESS.—All the records that are here pertaining to the case, at the Boise Land Office, and the records of counsel that were handling the Government's case.

Mr. KEIGWIN.—Would these papers properly be on the files of the local land office?

A. Not the papers I was looking for, no.

Q. Not the protest? A. No.

Q. The report wouldn't be?

A. No. The protest would have been filed in Washington, and should have been sent back here with all the other papers, and the report the same.

Mr. KEIGWIN.—Counsel for the complainant will state that, according to their information, all the papers bearing upon this case have been requested

(Testimony of Louis L. Sharp.)

from the files of the General Land Office, and that if any papers mentioned in the direct examination of this witness can be produced from the files of the General Land Office counsel will undertake to produce them.

Mr. BUNDY.—When you produce them we will undertake to cross-examine Mr. Sharp. There is nothing here we care about. These are nothing but the papers taken in the legal steps before the land office.

Mr. KEIGWIN.—For the present, counsel for the complainant tender this witness to counsel for the defendants for cross-examination on such subjects and to such extent as they may be advised is expedient for them to inquire. Do we understand that you decline to cross-examine him?

Mr. BUNDY.—I do not decline anything; but I simply say now, on the record, that we desire that the report made by the witness to the Department be presented in court, and the protest relative to entries in the Basin, to which he has testified, be produced in court, and that counsel for the defendants are not prepared to cross-examine him until he produces such reports; and in the event of the failure of the complainant to present Mr. Sharp for cross-examination after the reports are produced we will move to strike his testimony from the record.

(Witness excused.)

Mr. BUNDY.—Defendants now move to strike out all the evidence of the witness Sharp for the following reasons: First, that he has testified with refer-

(Testimony of Louis L. Sharp.)

ence to none of the lands described in the complaint in this action; second, that certain reports testified to by him have not been produced, nor has any excuse been given for failure to produce them.

[Testimony of Gustave A. Link, on Behalf of the Complainant.]

GUSTAVE A. LINK, produced as a witness on behalf of the complainant, being first duly sworn, testified as follows:

Direct Examination.

(By Mr. GORDON.)

Q. Mr. Link, did you take up a claim under the Timber and Stone Act some years ago?

A. Yes, sir.

Q. Do you remember when that was?

A. I believe it was in 1902.

Q. Where do you reside now, Mr. Link?

A. I live in Elmore County at present.

Q. Where did you reside in 1902, when you made your timber filing?

A. Boise City.

Mr. BUNDY.—He didn't make his filing in 1902; he made his final proof in 1902.

Mr. GORDON.—I know what he said.

Mr. BUNDY.—He made his entry in 1901.

The WITNESS.—I am not sure whether it was 1901 or 1902.

Mr. GORDON.—Q. Where were you employed at that time?

A. I was tending bar for John Lemp.

Q. How long had you tended bar for Mr. Lemp?

(Testimony of Gustave A. Link.)

A. I worked thirteen years for John Lemp.

Q. Prior to that?

A. Not prior to that, but altogether, till a year ago.

Q. Who first spoke with you about taking up a timber claim?

A. It was spoken of in the saloon by John Keane and Mr. West.

Q. Mr. Dean West? A. Dean West.

Q. What did they say to you about taking up a claim?

Mr. BUNDY.—That is objected to as incompetent, irrelevant and immaterial, and as asking for hearsay evidence.

A. It was spoken in the saloon that there were timber claims to be taken up in the Basin; they took some themselves.

Q. Did they tell you how much there would be in it?

Mr. BUNDY.—Objected to as incompetent, irrelevant and immaterial, and asking for hearsay evidence.

A. They didn't say anything about it. Yes, they told me there was some timber being taken up.

Q. And you made up your mind to take up a timber claim? A. Yes, sir.

Q. And did you go up with a party to look at this land? A. Yes, sir.

Q. Who was with the party?

A. My wife, Mrs. Link, Louis Nibler, and Mrs. West and Charlie Nelson.

(Testimony of Gustave A. Link.)

Q. Were you told that you would have to pay a location fee? A. Yes, sir.

Q. Who told you that?

A. Mr. West, I think.

Q. Did he tell you how much it would be?

A. \$25.

Q. And did you know who was to locate you before you went up there? A. No, sir.

Q. Did Mr. West tell you who would supply the money with which you would make final proof?

A. No, sir.

Q. Who located you?

A. Why, the gentleman's name I found out was Snow.

Q. Henry A. Snow?

A. I couldn't say what his initials are.

Q. Who arranged for the party to go?

A. I don't remember now.

Q. Where did you start from?

A. We started from Main street, between Tenth and Eleventh, on Main, I think. I believe it was on Main street, between Tenth and Eleventh, before the Wood River barn, I think.

Q. Did you say Mr. Snow located you?

A. Yes, sir.

Q. While you were up there being located, did you meet Mr. Patrick Downs?

A. I didn't know Mr. Downs, but I found out afterwards—we met a gentleman on the road, and Mr. Snow and this gentleman Downs spoke together, but I didn't know who it was at the time.

(Testimony of Gustave A. Link.)

Q. And when you got there did they take you out and show you a piece of land and locate you on it?

A. Mr. Snow did, yes, sir.

Q. What did he say when he showed you the land, as near as you can remember.

A. From Placerville he took me over a creek—I don't know what the name of the creek is,—but he took us quite a little ways from the town called Placerville, and we went in the timber, and he showed me my claim, showed me a claim, that is all I know, supposed to be mine.

Q. And you located on that claim?

A. Yes, sir.

Q. Did he write out the description of that for you?

A. For the land office?

Q. No, did he give you a written description, describe the property on paper, so that you could have the papers made out from that?

A. Then?

Q. Yes.

A. No, sir.

Q. Did you pay him for this claim before he located you?

A. No, sir; I paid him when he made out the papers when we came back.

Q. He made out the first papers for you?

A. Yes, sir.

Q. Where did he make them out?

A. In the saloon.

Q. Where you work?

A. Yes, sir.

Q. Did he go to the land office with you?

A. I don't know now whether he went with me or not, I couldn't tell you.

(Testimony of Gustave A. Link.)

Q. What did you pay him for making out the papers?

A. I don't think I paid him anything but the \$25.

Q. Then it came time to make your final proof?

A. That was afterwards.

Q. And where did you get the money with which you made final proof?

A. I got it from John Wells.

Q. How long had you known Mr. Wells before that?

A. I got acquainted with him after I filed.

Q. Who introduced you to him?

A. Mr. Dean West.

Q. Did he tell you you could get the money to make your proof with from Mr. Wells?

A. The way I understood it, everybody done that.

Q. Did you give Mr. Wells a note for this money?

A. No, sir.

Q. Pay him any interest? A. No, sir.

Q. And you subsequently sold this property, did you? A. Yes, sir.

Q. To whom did you sell it?

A. Mr. Pritchard, I believe.

Q. Did you get the money from Mr. Wells the day that you made your final proof in the land office?

A. No, I got it before.

Q. How long before?

A. I couldn't tell you that now.

Q. Was it a day or three days or four days?

A. I put it in the bank, I know, but how long before I couldn't tell you.

(Testimony of Gustave A. Link.)

Q. And how long after you made your final proof and got your receipt from the land office did you go to see Mr. Pritchard about selling this land?

A. It was quite a long time; it might have been six months before I sold it.

Q. Who told you to go to Mr. Pritchard?

A. I don't remember that.

Q. Did you know Mr. Pritchard before?

A. I seen him once or twice.

Q. I mean, did you know him to talk with?

A. No, sir.

Q. Had you any business with him?

A. No, sir.

Q. How long had you known Mr. Wells before you got this money from him?

A. I got acquainted with him between the filing and the proving up.

Q. Did you have any business dealings with him other than this one?

A. No, sir.

Q. I will show you the deed, dated June 19, 1903, by Gustave A. Link and Mary Link, to A. E. Palmer, and ask you if that is your signature to it?

A. That is my signature, yes, sir.

Q. Is that the signature of your wife?

A. Yes, sir; but she didn't sign at the same time I did.

Q. How long after you signed did she sign, or did she sign before?

A. She must have signed it after, because I didn't see her name there when I signed it.

Q. Was she in the city when you signed?

(Testimony of Gustave A. Link.)

A. No, she was in the mountains.

Q. And how long after that did she return?

A. I couldn't tell you that.

Q. How far in the mountains was she?

A. Thirty miles from here.

Q. I mean was it a week or two weeks?

A. It might have been a month; I couldn't tell you that exactly.

Q. How much did Mr. Pritchard give you for this?

A. He paid me \$250 or \$275; I have forgotten for sure.

Q. For each claim?

A. That was for my claim. My wife collected her own, I believe.

Q. Who was at Mr. Pritchard's office when you signed this deed and received the money besides Mr. Pritchard?

A. I couldn't tell you.

Q. Did Mr. Wells go with you?

A. No, sir.

Q. Did you see him there while you were there?

A. Not as I remember.

Q. Did you go to Mr. Pritchard's office other than the one time?

A. That's the only time I remember.

Q. How long were you there at that time, the best you can remember? Ten minutes or an hour??

A. I couldn't tell exactly how long; it might have been half an hour or ten minutes—I don't remember that.

(Testimony of Gustave A. Link.)

Q. Was this paper drawn up when you went there?

A. I don't know whether it's the same paper or not.

Q. Did he have a paper there for you to sign?

A. Yes, sir; when I went there, he had something.

Q. What did you say to him when you went in there? Did he know what you came for?

A. I don't remember now how it came up?

Q. As best you can remember; see if you can remember what happened there. Can't you remember?

A. It's a long time ago; I have kind of forgot what did come up.

Q. Now, did you expect to get more than \$250 or \$275?

A. The way I understood it, everybody got that that filed.

Q. And you understood that before you went up there, didn't you, I mean before you filed you understood that? A. No, sir.

Q. Where did you learn that you were going to get \$275 for this?

A. After we proved up on this I heard from several parties that they sold for \$250.

Q. Did you pay Mr. Wells the money, or did Mr. Pritchard say anything about it? Did Mr. Pritchard say anything to you about the money you owed Wells at that time? A. Not as I remember.

Q. Just gave you the \$250 or \$275, whatever it was, and you signed the deed? A. Yes, sir.

(Testimony of Gustave A. Link.)

Q. And your wife wasn't there at that time?

A. No, sir.

Q. Now, did I understand you to say you got this money from Mr. Wells the day before you proved up, or the same day?

A. Just before I proved up.

Q. How long before?

A. I couldn't tell you.

Q. Was it a day or two?

A. I don't know; it was just before I proved up.

Q. Then you put it in the bank?

A. Yes, sir.

Q. Was anything said by Mr. Wells when he gave you that money as to what you should say when asked whether that was your own money at the land office?

A. No, sir.

Q. He didn't tell you to say that it was your own money?

A. Not as I remember.

Mr. GORDON.—We offer in evidence the patent issued to Gustave A. Link, dated February 1, 1904, and the certificate of recordation. This is a certified copy of the patent. And we offer the deed, dated June 19, 1903, made by Gustave A. Link, and Mary Link, his wife, to A. E. Palmer, consideration \$2000, embracing the southwest quarter of section 24, township 7 north of range 5 east, Boise Meridian. The deed also conveys the north half of the southeast quarter of section 22, and the north half of the southwest quarter of section 23, township 7 north of range 5 east, Boise Meridian.

Mr. BUNDY.—Haven't you got the papers there?

Mr. GORDON.—No, they are on file in the Borah

(Testimony of Gustave A. Link.)

trial, and we have made a search and we can't find them.

Mr. BUNDY.—They must be some place.

(Gustave A. Link papers marked Plaintiff's Exhibit No. 69A to 69I, inclusive.)

Mr. GORDON.—Q. You never filed on but one piece of land, did you, under the Timber and Stone Act? A. That's all.

Q. Did you ever make but the one deed to that piece of property that you filed on?

A. I believe, if I recollect right, I believe it was \$1000 I signed for.

Q. What I mean is, did you make more than one deed? Did you make one deed and were asked to make another one? A. I don't remember that.

Q. Did your wife take up a claim at the same time you did? A. Yes, sir.

Q. And you paid her filing fee, did you?

A. Yes, sir.

Q. And did you get the money for her with which she made her final proof? A. Yes, sir.

Q. Where did you get that from?

A. John Wells.

Q. Do you know to whom she sold her property?

A. I believe she sold it to the same party I did.

Cross-examination.

(By Mr. BUNDY.)

Q. Mr. Link, the first time you heard about this timber land business at all was there in the saloon?

A. Yes, sir.

(Testimony of Gustave A. Link.)

Q. Just some talk between some of your customers? A. Yes, sir.

Q. And you learned in that talk, did you, that you had a right to go up there and enter timber land?

A. Yes, sir.

Q. And so you got with a party and went up there with Mr. Snow, and he located you?

A. Yes, sir.

Q. Who paid for the rig that you went up there with? A. The party did.

Q. You each paid your share? A. Yes, sir.

Q. And how much did you pay Mr. Snow for locating you? A. \$25 each.

Q. Where did you get that money?

A. I had it.

Q. You didn't get that from Mr. Wells or anybody else? A. No, sir.

Q. When you came to the land office to make your first filing you had to pay some filing fees?

A. Yes, sir.

Q. Who paid that? A. Myself.

Q. For yourself and wife? A. Yes, sir.

Q. And you didn't get that from Mr. Wells?

A. No, sir; didn't know Mr. Wells.

Q. Up to that time, the time you filed your first paper, had you had any talk with anybody, Mr. Wells or anybody else, about selling this land to them?

A. No, sir.

Q. Had anybody ever offered to buy it from you at the time you filed your first papers?

A. No, sir.

(Testimony of Gustave A. Link.)

Q. Had you offered to sell it to anybody at that time? A. No, sir.

Q. Did you know at that time who you was going to sell it to? A. No, sir.

Q. Did you know whether you was going to sell it at all or not? A. I couldn't tell that.

Q. How long after you filed your first papers was it that you first got acquainted with John I. Wells?

A. Some time after I filed—I don't know.

Q. Had somebody told you in the meantime that you could sell this land for enough money so that you would make a profit of about \$250?

A. There was no price. They told me that after I got title to it I could sell it.

Q. That was Mr. West or some of your friends?

A. It was general talk all around.

Q. That there was a market for this land—that you could sell it? A. Yes, sir.

A. Yes, sir.

Q. Did they tell you at that time—at the time you had this talk with John I. Wells, when he gave you the money, had somebody else made arrangements with him for you, West or somebody?

A. The way I understood it, everybody done the same thing I did, got the money from John Wells.

Q. At the time you got the money from Wells did you go to him yourself and ask him for it?

A. I forget now how I got it.

Q. At any rate, when you got the money from Wells did he ask you to sell to him?

A. No, sir; he didn't say anything about selling

(Testimony of Gustave A. Link.)
it.

Q. He simply gave you the money for yourself and wife and you made final proof?

A. Yes, sir.

Q. After you made final proof, you went up to Pritchard's office, some time after?

A. Yes, sir.

Q. You had heard the general talk that Pritchard was buying claims?

A. That was the understanding all around.

Q. And your understanding was that you could go to Mr. Pritchard and make \$250 over and above what it cost you?

A. That was what everybody else was getting.

Q. You didn't understand that you were selling it for \$250, but that you were selling it for \$250 besides what Wells had given you?

A. I supposed I had \$250 clear.

Q. And you understood that the money Wells advanced to you was taken out by Pritchard when he paid you?

A. That is the way everybody had it.

Q. You didn't understand that when you went and made that entry on this land the first time that you was working for anybody, did you, Mr. Link?

A. Not that I knowed of; I was working for myself.

Q. There wasn't anybody else had any interest in it at that time, was there?

A. No, sir, only for my own purpose.

Q. And at the time you filed on that land you

(Testimony of Gustave A. Link.)

didn't know exactly what you was going to do with it? A. No, sir, not exactly.

Q. You expected to sell it if you got a chance?

A. I expected to make a little money out of it.

Q. And you expected to make that money by selling it for more than it cost you? A. Yes, sir.

Q. You expected to make something out of it by selling it for more than it cost you?

A. Yes, sir.

Q. When you sold it to Mr. Pritchard you understood that he was keeping the money to pay Wells?

A. That was the understanding.

Q. So that you sold this timber for \$650 or \$675?

A. That was what the rest of them did, and I understood I was doing the same.

Q. There was a general market price?

A. Yes, sir.

Q. And you understood you was getting the same as the others? A. Yes, sir.

Q. And that price was \$650 or \$675?

A. Yes, sir.

Q. It is charged in the complaint here, Mr. Link, that at the time you made your first filing, you then had an agreement that as soon as you got title you would turn it over to somebody. Is that true?

A. It is false.

Q. It is charged in this complaint that at the time you made final proof you had made an arrangement by which you would sell it. Is that true or false? A. It is false.

Q. Had you ever made any arrangements, in

(Testimony of Gustave A. Link.)

writing or otherwise, by which you agreed to sell this land to anybody? A. No, sir.

Q. The money you got from John I. Wells was the only money used in buying this land that you *hadn't*? A. That was it.

Q. And you understood from Mr. Wells that you had borrowed it? A. Yes, sir.

Q. And you supposed that Mr. Pritchard was keeping it out when he paid you the \$250 or \$275?

A. That was my understanding.

Redirect Examination.

(By Mr. KEIGWIN.)

Q. Do you remember where you found Mr. Wells the time you got that \$800 from him?

A. I didn't get the \$800 at one time.

Q. How much did you get?

A. I got \$400 for myself, and my wife's money I got some other time.

Q. You got your own money and your wife's?

A. I got both, but not at the same time.

Q. The first time you went to him where did you find him? A. I don't remember just now.

Q. Who told you to go to Mr. Wells?

A. Why, I don't remember that either, who told me.

Q. What did you say to him when you came to him?

A. The way I understood at the time, I thought it was known that everybody got the money from John Wells to make filings.

Mr. BUNDY.—Do you mean filings or final proof?

(Testimony of Gustave A. Link.)

A. Final proof.

Mr. KEIGWIN.—Q. Then you went to Mr. Wells? A. I couldn't tell you about it.

Q. How long had you known Mr. Wells?

A. After I came back from filing.

Q. You hadn't known him at all before that?

A. No, sir.

Q. What business was Mr. Wells in then?

A. I couldn't tell you that.

Q. Where was his office?

A. I believe he had an office—I don't know if he had an office first when I got acquainted with him. I believe he had an office on Idaho street afterwards.

Q. Didn't you go to his office to get this money?

A. I believe I went to his office when I got my wife's money.

Q. When you got your money where did you get it?

A. I don't know; but my wife's money I got at his office.

Q. Who went with you? I mean the first time you had any talk with Mr. Wells, where did you find him?

A. I have seen him in the saloon there several times, but it is such a long time ago that I have forgotten.

Q. Don't you remember when you first spoke to him about getting that money?

A. I don't remember now.

Q. Who told you that you could get the money from Mr. Wells?

(Testimony of Gustave A. Link.)

A. Why, it was general talk; everybody got their money from Wells.

Q. He was distributing money around, was he?

A. It looked that way.

Q. A kind of a Santa Claus?

A. Not a Santa Claus, but I understood everybody got money to prove up from him.

Q. What did you say to him?

A. I don't remember.

Q. Do you remember who went with you?

A. I don't remember.

Q. Was it Dean West?

A. I don't remember.

Q. Or did you go by yourself?

A. I don't remember.

Q. You don't remember anything at all about the first time you went to see Mr. Wells?

A. I don't remember only that I got the money from him.

Q. What did you say to him?

A. I don't remember.

Q. Did you tell him that you were Mr. Link?

A. Why, he knowed me then.

Q. Did you tell him that you wanted money?

A. I don't know now.

Q. Did you tell him what you wanted the money for?

(No answer.)

Mr. BUNDY.—Mr. Link, if you don't remember about it, say so.

The WITNESS.—It is such a long time ago that

(Testimony of Gustave A. Link.)

I have forgot it.

Mr. KEIGWIN.—Q. You don't remember anything at all about that interview?

A. Not the first one, but the second one I remember well.

Q. Where did you find him then?

A. I went to his office.

Q. Who went with you? A. My wife.

Q. What did you say to him?

A. That it was time to prove up. I and Mr. Wells went from the office to get the money for her, and Mrs. Link waited in the office, as near as I can recollect.

Q. Where did you go to get the money?

A. I don't remember that now either.

Q. Did you go to the bank?

A. Very likely we did, but I don't remember.

Q. Do you remember what bank?

A. I don't remember.

Q. Do you remember what you said to Mr. Wells when you took Mrs. Link in there?

A. I don't remember what he said.

Q. You remember that you got the money?

A. I got the money, yes, sir.

(Witness excused.)

[Testimony of Mary Link, on Behalf of the Complainant.]

MARY LINK, produced as a witness on behalf of the complainant, being first duly sworn, testified as follows:

Direct Examination.

(By Mr. GORDON.)

Q. Mrs. Link, you took up a timber and stone claim in 1901, did you? A. Yes, sir.

Q. Who first spoke with you about taking up a claim? A. Mr. Link.

Q. What did he say to you about it?

Mr. BUNDY.—We object to that as incompetent, irrelevant and immaterial, and as calling for hearsay evidence.

A. He come home and told us we was going up to Placerville to take up some land.

Mr. KEIGWIN.—Q. Mr. Link, your husband, is Mr. Gustave Link, who has just been examined?

A. Yes, sir.

Mr. GORDON.—Do you know who located you?

A. Mr. Snow.

Q. Did you meet Mr. Downs up there?

A. No, sir, don't know the gentleman.

Q. Then you came back and went to the land office and filed certain papers? A. Yes, sir.

Q. Do you know who prepared the first paper you filed in the land office? A. No, sir.

Q. Who made it out for you?

A. No, sir, I do not.

Q. Then it came around time for you to make

(Testimony of Mary Link.)

your final proof? A. Yes, sir.

Q. Do you know Mr. John I. Wells?

A. I only seen the gentleman once.

Q. Where was that? A. At his office.

Q. What did you go there for?

A. Mr. Link took me up there, and he told me to stay there until he went down to the bank to get the money.

Q. Did Mr. Wells go with him?

A. No, sir, he did not.

Q. Did Mr. Wells stay there?

A. Yes, sir.

Q. Then he came back and you and he went to the land office? A. Yes, sir.

Q. And paid that money that Mr. Link had, some \$400, into the land office, and you made your final proof? A. Yes, sir.

Q. How long after that was it that you sold this land?

A. I don't remember exactly; it was over a year I think.

Q. To whom did you sell it?

A. I couldn't tell you that.

Q. In whose office did you sell it?

A. Mr. Pritchard's.

Q. Mr. Louis M. Pritchard? A. Yes, sir.

Q. How much did Mr. Pritchard pay you the day you were there? A. \$250.

Q. Did he give you that in cash?

A. Yes, sir.

Q. I will show you deed dated June 19, 1903,

(Testimony of Mary Link.)

made by Gustave Link and wife Mary to A. E. Palmer, and ask you if that is your signature to that deed? A. Yes, sir.

Q. Were you in Boise all of the summer of 1903?

A. No, sir.

Q. Do you know when you went out of the city?

A. I was up to my brother's place up the river.

Q. How far from here?

A. About thirty miles.

Q. When did you go up there, what month?

A. I don't remember that; it was in summer time.

Q. Was it before you signed this deed?

A. Yes, sir.

Q. And when did you return?

A. In August, I think, or September, some time like that, as near as I can remember.

Q. When you signed this deed—you signed this deed, did you, after you returned?

A. Yes, sir.

Q. Mr. Link didn't sign the same day you did, did he?

A. No, sir, I don't think he did.

Q. Did you know Mr. A. E. Palmer?

A. No, sir.

Q. Did Mr. Pritchard give you any other money, or say anything about any other money than that \$250? A. No, sir.

Q. Did you have any talk with him about the sale of this property? A. No, sir.

Q. You went there and told him who you were?

(Testimony of Mary Link.)

A. Yes, sir.

Q. Did he know what you came for?

A. Yes, sir. I suppose he did.

Q. And then he got this deed out and you signed it?

A. Yes, sir.

Q. When you entered this land did you know who you were going to convey to, or did you know you were going to convey to somebody?

A. No, sir, I never understood it, because Mr. Link did the whole business.

Q. And all you understand is that you signed the deed and got this money?

A. I signed the deed and he handed me the money, and I understood it was all finished.

Q. And you knew nothing about any other money?

A. No, sir, I did not.

Q. Wasn't anything said to you about any other money?

A. No, sir.

Mr. GORDON.—We offer in evidence certified copy of the patent issued to Mary Link, for the north half of the southeast quarter of section 22, and the north half of the southwest quarter of section 23, in township 7 north of range 5 east, Boise Meridian, the deed to that property already having been offered in evidence in connection with the testimony of Gustave A. Link.

(Marked Plaintiff's Exhibit No. 70A.)

Mr. GORDON.—All these patents are certified copies and not the original patents.

Q. When you were located, Mrs. Link, on this ground by the cruiser, did he just take you out and

(Testimony of Mary Link.)

show you a piece of land and tell you that was the piece you were to take?

A. We went up in the wagon.

Q. And did he go with you? A. Yes, sir.

Q. And did he show you a piece of land and tell you that was the piece you were to locate on?

A. Yes, sir.

Mr. KEIGWIN.—When you went to Mr. Wells' office and waited for this money—

A. (Interrupting.) Yes, sir, he told me to wait there for it.

Q. —did Mr. Wells give you any money?

A. No, sir.

Q. He gave him a check? Did Mr. Link draw his own money from the bank?

A. He gave it to me; that's all I know about it.

Cross-examination.

(By Mr. BUNDY.)

Q. Mrs. Link, when Mr. Snow pointed you out this claim up there he didn't tell you you had to take that, and that was the only one you could have, did he? A. No, sir.

Q. He pointed out this claim and told you that it was a good one, and you said that would be all right? A. Yes, sir.

Q. And what you wanted to get was a claim that had some timber on it? A. Yes, sir.

Q. And when he showed you this one it looked all right to you, didn't it? A. Yes, sir.

Q. You understood, did you not, that Mr. Snow was working for you, and you were paying him to

(Testimony of Mary Link.)

pick out a good claim for you? A. Yes, sir.

Q. And the one he picked out for you looked good to you and you took it? A. Yes, sir.

Q. At the time you located this land you hadn't had any talk with anybody about selling it, had you?

A. No, sir.

Q. And when you came back you had to go to the land office? A. Yes, sir.

Q. Did your husband go with you?

A. I think he did.

Q. Did he pay it or did you?

A. Mr. Link handed it to me and I paid it to the land office.

Q. That was \$12.50? A. Yes, sir.

Q. And then afterwards it came time to make final proof, and your husband took you up to Wells' office. Before you made final proof you went up to Wells' office?

A. I never went to Wells' office only once, and that was when Mr. Link told me to stay there while he went out and got the money; that's the only time I seen Mr. Wells.

Q. Up to that time had you ever had any talk with anybody about selling this property for you?

A. No, sir.

Q. Had you promised to deed it or sell it to anybody?

A. No, sir, I had not; Mr. Link did all the business for me.

Q. So that when you went up to Pritchard's office and made a deed and got \$250 you understood

(Testimony of Mary Link.)

that Mr. Link had made all the arrangements before? A. Yes, sir.

Q. You didn't know anything about how much money was to be paid you for the claim?

A. No, sir.

Q. And didn't know how much money was held out to pay Mr. Wells? A. No, sir.

Q. The procuring of the money then, and the selling of the land was all done by your husband?

A. Yes, sir.

Q. The only thing you know about it is that nobody had talked to you about selling it?

A. Yes, that is all.

Q. At the time you filed this first paper in the land office had you made any agreement with anybody to turn that property over to them as soon as you got title? A. No, sir, I had not.

Q. When you made that first filing, did you do it for your own benefit? A. Yes, sir.

Q. And I suppose you intended to sell it when you got title to it to whoever would pay you the most for it? A. Yes, sir.

Q. You wasn't working for anybody at the time you made that application? A. No, sir.

Q. And at the time you paid your money for filing fees in the land office the first time, and paid the expenses of that trip you didn't know how much you were going to get out of it? A. No, sir.

Q. It is stated in this complaint, Mrs. Link, that you went to the land office and filed this first paper for the benefit of the Barber Lumber Company. Is

(Testimony of Mary Link.)

that true or false? A. It must be false.

Q. It is charged in this complaint that when you went and filed that first paper you had an agreement then with the Barber Lumber Company or somebody else that just as soon as you got title to the land you was to turn it over to them. Is that true or false?

A. No, sir, it is not true, because I never had no agreement with anybody.

Q. And that same thing is true at the time you made your final proof?

A. I never had any agreement with anyone.

Q. And if any agreement had been made for you, you didn't know anything about it, did you?

A. No, sir, I didn't have any agreement.

Q. And you hadn't authorized your husband to make any agreement of that kind for you?

A. No, sir, he done all the business.

(Witness excused.)

Mr. GORDON.—Let the record show that Mr. Wells has been present in the room throughout the day.

At this time court adjourned until Monday, February 15th, 1909, at 10 A. M.

Court met on Monday, February 15, 1909, at 10 A. M., pursuant to adjournment, the Examiner and counsel for the respective parties being present.

[Testimony of John T. Morrison, on Behalf of the Complainant (Recalled).]

JOHN T. MORRISON, recalled, testified as follows:

Mr. GORDON.—Mr. Bundy, after Governor Morrison was examined on Saturday, he stated that he wanted to make clear some point in his testimony.

The WITNESS.—If I may make this statement: When I was referring to State selections under list filed September 12th, and referring to the preliminary selection of approximately four thousand acres, which was afterwards increased by some hundreds of acres, I was referring to the selection in 6-4, because in that selection there was much more land selected outside of that section, and I didn't want any ambiguity to arise.

Mr. BUNDY.—That is what I understood.

(Witness excused.)

[Testimony of Henry Bayhouse, on Behalf of the Complainant.]

HENRY BAYHOUSE, produced as a witness on behalf of the complainant, being first duly sworn, testified as follows:

Direct Examination.

(By Mr. GORDON.)

Q. You are Henry Bayhouse?

A. Yes, sir.

(Testimony of Henry Bayhouse.)

Q. What is your occupation, Mr. Bayhouse?

A. I am in the florist's business.

Q. What was your occupation in September, 1902?

A. I was in the Eastman-Teller Hardware Store—it was the Fletcher-Steen Hardware Company.

Q. What were your duties there, what position did you hold?

A. I was buyer and salesman.

Q. Do you remember what your salary was in 1902?

A. It was about \$1100 a year.

Q. Where did you reside in 1902?

A. 1010 O'Farrell, Boise.

Q. And do you reside there now?

A. Yes, sir.

Q. You took up a claim under the Timber and Stone Act in 1902, did you?

A. Yes, sir.

Q. I show you timber and stone land sworn statement, dated September 15, 1902, and ask you if that is your signature to it?

A. Yes, sir.

Q. And you filed that paper in the land office?

A. I suppose this is the one. I filed one there.

Q. I show you testimony given by Henry Bayhouse on final proof, dated January 9, 1903, and ask you if that is your signature to that?

A. Yes, sir.

Q. I show you cross-examination taken at the same time. Is that your signature?

A. Yes, sir.

Q. I show you non-mineral affidavit, dated Sep-

(Testimony of Henry Bayhouse.)

tember 15, 1902, and ask you if that is your signature? A. Yes, sir.

Q. And deed dated February 12, 1903, by Henry Bayhouse to Horace S. Rand? Is that your signature? A. Yes, sir.

Q. Mr. Bayhouse, are you a brother of George Bayhouse? A. Yes, sir.

Q. And Frank Bayhouse? A. Yes, sir.

Q. Have you another brother that took up land at the same time? A. Alfred Bayhouse.

Q. Do you remember who was the first person that suggested to you taking up land under the Timber and Stone Act?

A. No, I can't remember.

Q. Who did you go to see about taking up this claim? A. I spoke to John Wells about it.

Q. That is John I. Wells? A. Yes, sir.

Q. What did Mr. Wells say?

A. I asked him if he could locate me, and he said he could.

Q. Did he locate you at that time, or how long afterwards did he?

A. Within a very few days of the time I spoke to him.

Q. Did you have any arrangements with him at that time as to what you were to pay for it?

A. Yes, I believe I asked him what the charge would be, and he said \$50, if I am not mistaken.

Q. And did you go alone, or did you go with someone else?

(Testimony of Henry Bayhouse.)

A. No, there was two other parties with us.

Q. You mean three or four persons went with you?

A. There was anyway two outside of myself.

Q. Did Mr. Wells go with you? A. No.

Q. Who arranged for the party?

A. Well, I arranged for myself, and I suppose the others did the same way, and we went together.

Q. Who told you the others were going, and where did you meet them?

A. I couldn't say where I met them. The parties I went with knew I was going and I knew they were going, and so we went together.

Q. Who told you they were going?

A. They did themselves.

Q. How did you know you was going on that day? Did Mr. Wells fix the date for the party to go?

A. I don't know how they knew.

Q. Did you know who was to locate you before you left Boise?

A. I believe we did, yes.

Q. Did you know Mr. Patrick Downs at that time?

A. No, I don't remember of meeting him before that time.

Q. How long before this visit you made to Mr. Wells had you known him?

A. Why, by sight, I can say just a few months—perhaps six months.

Q. Had you ever known him to speak with?

A. No, not before.

(Testimony of Henry Bayhouse.)

Q. Where was this land that you located on—where is it?

A. It was a few miles beyond Mose Kempner's ranch.

Q. And you and the others of the party went to Mose Kempner's ranch, and who did you meet there?

A. Do you mean the people that were there?

Q. No, I mean the people that you were to do business with.

A. In my crowd there was James Belk, and a brother in law of his—I can't recall his name now. We met Mr. Downs after we got there.

Q. That is Mr. Patrick Downs?

A. Yes, sir.

Q. Now, did Mr. Downs give you a letter—did Mr. Wells give you a letter to Mr. Downs?

A. One of the party had a letter to Mr. Downs.

Q. Did you see that letter?

A. I did not, no.

Q. When that letter was given to him Mr. Downs knew your business there? A. Yes.

Q. And he proceeded to locate the party?

A. Yes, sir.

Q. Now, you say he located you several miles beyond Mose Kempner's ranch? A. Yes, sir.

Q. Were you all located at the same time, or did he take you out separately to locate you?

A. Several of us went together.

Q. And did you have any preference of the land that you were to locate on, or did he just show you

(Testimony of Henry Bayhouse.)

certain lands which was to be the piece you were to locate on?

A. He showed me the claim I was to have.

Q. And did you pay him for locating you, or—

A. No, I paid Mr. John I. Wells.

Q. Did you pay Mr. Wells before you started from Boise or after your return?

A. After we came back.

Q. Did Mr. Downs give you a description of this property, or did he send it to somebody?

A. I believe he sent them down.

Q. Do you know to whom he sent them?

A. I couldn't answer positively which one had them, no.

Q. But you were instructed to go to Mr. Wells to get your description? A. Yes, sir.

Q. And the same instruction was given to the rest of them, wasn't it? A. Yes, sir.

Q. Was Merritt L. Twogood of that party?

A. He wasn't in the party that I went up with.

He came up after we got there.

Q. Was Edward E. Butler in that party?

A. He was up there at the time, yes, sir.

Q. Mr. Wells remained in Boise though?

A. Yes, sir.

Q. How long after you located was it before you returned to Boise?

A. We returned the next day.

Q. And did you get back to Boise the next day?

A. No, I think we stopped at the Half-way House.

(Testimony of Henry Bayhouse.)

Q. Do you remember the hour of the day, or the time of day that you got back into Boise on your return? A. No, I don't.

Q. Was it morning or afternoon or night?

A. I think it was morning.

Q. Do you know whether you went the same day to Mr. Wells' office? A. No.

Q. How long after that did you go to Mr. Wells' office.

A. I couldn't be positive, but it wouldn't be later than the next day after we got here.

Q. And did Mr. Wells give you the description of your property there?

A. I couldn't say positively now.

Q. You didn't have the description?

A. I don't know whether I got it or not, to tell the truth about it.

Q. Do you remember that Mr. Downs made out a description of all of them and gave them to some one of the party? A. Yes.

Q. Did he give that to you to take to Mr. Wells, or to some one of the others of the party?

A. No, it was some one in the party that had it, but I don't remember which one it was.

Q. You know it wasn't yourself?

A. Yes, I know it wasn't myself.

Q. And you had no description of your property other than what was contained in that paper?

A. No.

Q. How long after you returned was it that you

(Testimony of Henry Bayhouse.)

went to Mr. Wells' office?

A. I should judge the next morning after we got in.

Q. This sworn statement, which is the first paper you filed in the land office, dated September 15th—I will ask you if you know who prepared that paper for you?

A. I think I got this one from Mr. Kinkaid.

Q. Did you know Mr. Kinkaid before that time?

A. No, I did not.

Q. You had never met him? A. No, sir.

Q. And was that the day after you returned from viewing the land that you received this paper?

A. Yes, sir, the next day.

Q. How did it happen that you went to Mr. Kinkaid's office?

A. Mr. Wells sent me there to get the paper, I believe.

Q. Was the paper prepared when you arrived at Mr. Kinkaid's office?

A. I believe it was, yes.

Q. Did you pay Mr. Kinkaid for drawing this paper for you?

A. No, I don't remember paying Mr. Kinkaid any money.

Q. And then you went from there to the land office with this paper? A. Yes, sir.

Q. And filed it? A. Yes, sir.

Q. Do you remember whether you went alone, or who went with you?

A. No, I think that they required witnesses at

(Testimony of Henry Bayhouse.)

the time, and Mr. James F. Belk, Edward Butler—I couldn't state positively any other parties.

Q. Now, there was a non-mineral affidavit that you had to make the same day that you filed your original sworn statement. Did Mr. Kinkaid prepare that too?

A. Not that I know of. I think I got that in the land office.

Q. Look at it again. Look at the two papers, and see if you can refresh your memory as to where it was prepared. I am speaking about the writing. What is your best recollection as to who prepared that paper, and where you received it; that is the non-mineral affidavit.

A. To the best of my recollection, that was one that I signed in the land office.

Q. Maybe you did sign it in the land office, but do you know who prepared the paper?

A. No, I couldn't say.

Q. You didn't take the paper to the land office with you, did you?

A. I think I took one there.

Q. That was the first paper? A. Yes, sir.

Q. Do you remember whether you took this non-mineral affidavit to the land office?

A. No, I don't.

Q. Now, on the same day, or paper dated the same date—that is a notice of publication—do you know where you prepared that paper and where you received it?

A. To the best of my recollection that was one

(Testimony of Henry Bayhouse.)

that was in the land office, prepared by the clerk in the land office.

Q. And did you give the person who prepared this paper these names as witnesses, or did they have them already?

A. No, I think I gave them their names.

Q. Your best recollection is that that was done in the land office? A. Yes, sir.

Q. And did I understand you to say that Mr. Kinkaid wasn't at the land office when you were there? A. No, he was not.

Q. And this money that you paid Mr. Wells for the location fee, I understood you to say it was \$50.

A. Yes, sir.

Q. Was that your own money?

A. Yes, sir.

Q. Paid by check or in cash?

A. I think I paid it in cash.

Q. Did you pay for anybody else's location fee except your own with that \$50, or were you charged \$50 for locating?

A. I think I paid for one of my brothers at the time.

Q. Which one of your brothers was it?

A. Alfred.

Q. You paid his location fee? A. Yes, sir.

Q. And then you paid a filing fee in the land office? A. Yes, sir.

Q. How much was that?

A. I don't remember; I think it was about \$12.50, but I couldn't say positively.

(Testimony of Henry Bayhouse.)

Q. Did you pay your brother Alfred's expenses at the land office at that time too?

A. I don't remember paying any at the land office.

Q. Then after sixty or ninety days it came time to make your final proof? A. Yes, sir.

Q. And do you remember that occasion?

A. I remember going up to the land office to make it.

Q. Who went with you then?

A. I couldn't say. I don't remember.

Q. How much was this that you paid in the land office at that time?

A. It was something over \$400; I think it was about \$412.

Q. Did you pay it in check?

A. No, I believe it was in cash.

Q. And had you kept that money in the bank, or where did you get it?

A. Only part of it; I borrowed part of it.

Q. Who did you borrow part of it from?

A. John T. Barry.

Q. Is Mr. Barry in town now?

A. No, he is not.

Q. Do you know where he is?

A. The last I heard of him he was in Montana.

Q. Do you know how much you borrowed from him? A. \$400.

Q. Do you remember when you borrowed it from him?

A. Just a few days before I proved up.

Q. Did you give him a note for it? A. No.

(Testimony of Henry Bayhouse.)

Q. Did you pay him any interest on it?

A. I did, yes, sir.

Q. Do you remember when you repaid Mr. Barry that money?

A. Why, right after I had sold the timber I paid him back, and I think it was—I couldn't say exactly how long, I thought about sixty days.

Q. Now, you made your final proof on January 9, 1903.

A. Yes.

Q. How long after that was it that you negotiated for the sale of this property? Was it the same day?

A. As near as I can remember, it was some place near thirty days afterwards.

Q. When you got this money from Mr. Barry, do you know whether it was his own money or not, or whether he had gotten it from somebody for that purpose?

A. No, it was his own money.

Q. Did you understand, when you were located by Mr. Downs, that you could get the money to make your final proof with from them?

A. No.

Q. There was nothing said about it?

A. No.

Q. Did Mr. Barry say anything to you as to whether or not, when you went to the land office with that money, you should say it was your own money?

A. No, sir.

Q. Nothing was said about that by anybody?

A. Not that I know of.

Q. You say about thirty days after you made your proof you started negotiations for the sale of this property.

A. Yes, sir.

(Testimony of Henry Bayhouse.)

Q. Who were those negotiations had with?

A. Why, I sold it to—I don't know the party's name—but it was through John Kinkaid.

Q. Did you go to see Mr. Kinkaid about it?

A. Yes, sir.

Q. You were the first of your brothers to sell, weren't you? A. I believe I was.

Q. You were the first of the party, as best you know, that went up with you that sold?

A. Yes, I believe so.

Q. And upon whose suggestion was it that you went to see Mr. Kinkaid?

A. Why, I couldn't say any certain one. Different parties I had spoken with, and some of them said they had sold their timber, and then I went up there.

Q. Had you talked to Wells about this between the time you saw him in his office before you located and the time you sold?

A. No, I don't remember speaking to him about it.

Q. Had you seen Kinkaid about it? A. No.

Q. And you hadn't talked to anybody about it until about the time that you did sell?

A. No, I had spoken to some of them—I met them on the street—in regard to the timber.

Q. Do you remember the names of any persons you spoke with?

A. I think I spoke to Charles Kingsley.

Q. He is a lawyer here? A. Yes, sir.

Q. Had he sold his at that time?

(Testimony of Henry Bayhouse.)

A. I am under the impression that he said he had.

Q. Do you remember how much you sold this to Mr. Kinkaid for? A. \$800.

Q. How many times did you see Mr. Kinkaid with reference to the sale of this property?

A. I only saw him once.

Q. And how long were you with him on that occasion? A. I couldn't state exactly the time.

Q. Was it fifteen minutes or an hour?

A. Maybe twenty or thirty minutes.

Q. And did he have the deed prepared when you went there?

A. He had it in blank and filled it out.

Q. And you were paid that day?

A. Yes, sir.

Q. And the deed runs to Horace S. Rand, who is the grantee. Did you know Mr. Horace S. Rand?

A. No, I did not.

Q. Had you ever heard of him before?

A. No, I don't believe I ever had.

Q. Did you read this deed over before you signed it?

A. Why, the biggest part of it, yes.

Q. Did you notice the statement in here that the consideration was \$950?

A. I don't remember of seeing that in there, no.

Q. How was this money paid you—in cash or in check? A. In check.

Q. Whose check was it? Who signed the check?

A. I believe it was signed by John Kinkaid, on the First National Bank.

(Testimony of Henry Bayhouse.)

Q. Did you have a bank account of your own at that time?

A. I had some money, yes, sir.

Q. In which bank? A. The First National.

Q. Did you place it to your credit or did you just have it cashed?

A. Well, I think I got part of it in money and deposited the balance.

Q. Was it at that time that you repaid Mr. Barry his money?

A. I paid him I think the next day after that.

Q. How long had you known Mr. Merritt L. Two-good?

A. Up to that time about thirty years.

Q. And Mr. Edward E. Butler?

A. I should say five or six years.

Q. And Mr. Patrick Downs?

A. The day he located me was the first time I had met him.

Mr. GORDON.—We offer in evidence the timber and stone land sworn statement of Henry Bayhouse, dated September 15, 1902; the non-mineral affidavit of Henry Bayhouse, dated September 15, 1902; notice of publication of the same date; the testimony of Henry Bayhouse given on final proof, dated January 9, 1903; the cross-examination thereto attached; the testimony of the witnesses on final proof; the register's and receiver's certificates, dated January 9, 1903; and the deed, identified by Henry Bayhouse, dated February 12, 1903, made by Henry Bayhouse, to Horace S. Rand, consideration

(Testimony of Henry Bayhouse.)

\$950; also certified copy of the patent; all to the southwest quarter of section 3, in township 7 north of range 8 east, Boise Meridian.

(Marked Plaintiff's Exhibit No. 71A to 71N inclusive.)

Q. Mr. Bayhouse, when you paid your \$400 in the land office at the time you made your final proof, did they give you a receipt for that. A. Yes, sir.

Q. And did you deliver that receipt to anyone?

A. I am thinking that I turned it over when I sold my claim.

Q. You turned that over at the same time?

A. Yes.

Q. Not before? A. No.

Q. Did you ever make but the one deed to this piece of property? A. No, sir.

Q. Were you ever requested to make another deed? A. No, sir.

Q. And this is the only claim that you located on under the timber and stone act?

A. Yes, sir.

Cross-examination.

(By Mr. BUNDY.)

Q. Mr. Bayhouse, you have been examined at great length with reference to the details of taking your timber and stone entry, for the evident purpose of trying to show that you entered this claim at the instance of Pat Downs, Wells, and Kinkaid, and acted for them in the transaction, and that the money you borrowed was borrowed pursuant to some arrangement with them and indirectly from them, all

(Testimony of Henry Bayhouse.)

for the purpose of enabling you to carry out an agreement to turn this property over to them, or to such person as they should direct when you got title. Is that the facts or is it not?

A. That is what the questions led up to, but—

Q. (Interrupting.) I say, is that a fact that you entered this timber land for them? A. No.

Q. In your original filing papers that you filed in the land office you said, among other things, that "I have not, directly or indirectly, made any agreement or contract, or in any way or manner, with any person or persons whomsoever, by which the title I may acquire from the Government of the United States may inure in whole or in part to the benefit of any person except myself." Was that true at the time you made it? A. Yes, sir.

Q. Was that statement also true at the time you made your final proof? A. Yes, sir.

Q. Did you enter the land, make your filing on this land at the instance or for the benefit of the Barber Lumber Company? A. No, sir.

Q. Or of Pat Downs? A. No, sir.

Q. Or of any person other than yourself?

A. No, sir.

Q. You are charged, Mr. Bayhouse, in this complaint that the Government has filed here, with having entered into an unlawful and wicked conspiracy with the Barber Lumber Company, and others, to defraud the United States of America out of the land you entered. Is that allegation true or false?

A. It is false.

(Testimony of Henry Bayhouse.)

Q. It is also charged in this bill of complaint that you entered your land under an agreement with the defendants by which you were to enter it for their benefit, and go to the land office and testify falsely as to the purpose for which you were making your entry. Is that true or false?

A. No, sir; that is not true.

Q. Did you ever, at any time, have any agreement with anybody with reference to what you should do with the land after you acquired title, prior to the time you sold it?

A. No, sir.

Q. Was there any such understanding, express or implied, verbal or in writing, prior to the time you sold it?

A. No, sir.

Q. Did Mr. Wells, Mr. Kinkaid, Mr. Downs, or anyone else, prior to the time you filed your first papers, have any conversation with you, directly or indirectly, with reference to selling it or transferring title?

A. No, sir, they did not.

Q. Did they or anyone else have any conversation with you with reference to transferring title to anyone before you proved up and got final receipt?

A. No, sir.

Q. I will ask you, Mr. Bayhouse, if it was your understanding at the time you entered this claim that you had no right to sell it before you got title? Was that your understanding, that you had no right to sell it until after you got final receipt?

A. No, sir; I couldn't sell it until after I got title.

Q. Did anyone make any suggestion, directly or indirectly, to you that you deed in any other manner

(Testimony of Henry Bayhouse.)

than the way you understood under the law that you could deed? A. No, sir.

Q. This Mr. Barry, what was his business?

A. He was clerk in James A. Pinney's store.

Q. Where you worked? A. No.

Q. Was he a friend of yours?

A. Yes, sir.

Q. Did he have any relation or connection with John I. Wells, or Downs, or Kinkaid, or the Barber Lumber Company, or anyone else, so far as you know? A. No, sir.

Q. At the time you borrowed this money from Mr. Barry, was there any arrangement or understanding with him that you would sell it at any particular time, or to any particular person?

A. No, sir.

Q. Any provision of that kind?

A. Nothing at all.

Q. You knew that Mr. Wells and Mr. Downs at that time were engaged in the business of locating people on that land, did you not?

A. Yes, sir.

Q. And, as you understood it, were in partnership? A. Yes, sir.

Q. You paid \$50. Was it your understanding that the \$50 was to pay for the cruiser for selecting a suitable piece that was open to entry, pointing it out to you and taking such preliminary steps as was essential and necessary to make filing?

A. Yes, sir.

Q. So that when you went to Mr. Wells on your

(Testimony of Henry Bayhouse.)

return, it was to have him, as your employe, do what was necessary for you to do to file on the land?

A. Yes, sir.

Q. You say you went to Mr. Kinkaid at the suggestion of Mr. Wells? A. Yes, sir.

Q. Mr. Kinkaid at that time, I believe, was a lawyer or real estate man here?

A. Yes, I thought he was a lawyer.

Q. He had an office here? A. Yes, sir.

Q. And as you understood it, Mr. Wells was employing him to do what you had already paid Mr. Wells for doing? A. Yes, sir.

Q. That is the reason you didn't pay Mr. Kinkaid anything? A. Yes, sir.

Q. The question was asked you as to whether or not Mr. Downs simply picked out a piece of land and told you that was your piece. Did you understand that you were going to locate on such piece of land as Mr. Downs should select, or was he to make a selection for you?

A. He was to make selection for us.

Q. And you were relying on his knowledge as a cruiser and surveyor? A. Yes, sir.

Q. Did you understand that you hadn't any right of election in the matter?

A. No, if it wasn't satisfactory, I didn't have to take it.

Q. Claims, at that time, as long as they were timber claims, were all about the same?

A. Yes, sir.

Q. If the claim that Mr. Downs had pointed out

(Testimony of Henry Bayhouse.)

to you was not entirely satisfactory to you, you would have insisted on his showing you others?

A. Certainly.

Q. So that you don't wish to be understood as having gone up there to locate on such a piece of ground as Pat Downs required you to take?

A. No, sir.

Q. The ultimate selection was yours?

A. Yes, sir.

Q. And the only reason you didn't make any complaint was because the one he pointed out to you was entirely satisfactory? A. Yes, sir.

Redirect Examination.

(By Mr. GORDON.)

Q. Have you talked to anyone about this case, or about the testimony you should give in this case?

A. No, sir.

Q. Have you talked with any of the officers or agents of the Government about this case?

A. No, sir.

Q. Have you talked with Mr. Wells about this case? A. Very little.

Q. When did you talk with him?

A. Two or three months ago, I suppose.

Q. Did he come to see you about it?

A. No, sir.

Q. Did you go to see him?

A. No, just happened to meet him on the street.

Q. What did he say about it?

A. He didn't say anything; I only made the remark how soon the trial was coming on.

(Testimony of Henry Bayhouse.)

Q. You have seen him here in the halls, have you?

A. Yes, sir.

Q. Have you spoken to him since you have been here?

A. Not any more than common conversation—pass the time of day.

Q. Nothing about the case?

A. No, sir, nothing at all.

Recross-examination.

(By Mr. BUNDY.)

Q. At the time you borrowed this money from Mr. Barry, you had other money in property, an equal amount, that would have been available, of your own? A. Yes, sir.

Q. I notice in your final proof papers, you say: "Earned it by working; have had it at least five years."

A. I had had that other money out; I couldn't always get it in at the time.

Q. The particular money you borrowed was simply standing for other money that you had, in regard to which you testified about?

A. Yes, sir.

(Witness excused.)

[Testimony of Jackson Ownbey, on Behalf of the Complainant.]

JACKSON OWNBEY, produced as a witness on behalf of the complainant, being first duly sworn, testified as follows:

Direct Examination.

(By Mr. GORDON.)

Q. Mr. Ownbey, where do you reside?

A. About five miles down below Boise.

Q. What is the place called?

A. Well, it is called the Pence place, I believe.

Q. How long have you resided there?

A. I have only resided at that place about a year, but I have lived in the country surrounding here for twenty years.

Q. Where did you live in 1902?

A. I lived at what is known as the Half-way House, between here and Idaho City.

Q. How far is that from Boise?

A. Eighteen miles.

Q. How long had you resided there in 1902?

A. Two years.

Q. Were you running the Half-way House at that time? A. Yes, sir.

Q. And how long have you been away from there?

A. I have been away from there—well, I sold out in 1903, I believe. I disremember just the year now. It might have been 1902. I sold out in the fall—maybe it was the fall of 1902 or 1903. I don't

(Testimony of Jackson Ownbey.)

remember. I was there two and a half years, I believe.

Q. You took up a claim under the timber and stone act in August, 1902, did you?

A. Yes, sir.

Q. I show you timber and stone land sworn statement, dated August 30, 1902, and ask you if that is your signature to it.

A. It is.

Q. And you filed that paper in the land office?

A. Yes, sir.

Q. I show you non-mineral affidavit, dated the same day. Was that paper signed by you?

A. Yes, this is my signature.

Q. I show you testimony of Jackson Ownbey, given on final proof, dated December 11, 1902, and ask you if that is your signature to that.

A. Yes, sir.

Q. I show you the cross-examination attached and ask you if you signed that cross-examination.

A. Yes.

Q. I show you deed, dated February 9, 1903, and ask you if that is your signature to that paper.

A. Yes, sir.

Q. And is Mary E. Ownbey your wife?

A. Yes, sir.

Q. And is that her signature?

A. That is her signature.

Q. Did your wife take up a claim?

A. Yes, sir.

Q. Mr. Ownbey, who first spoke with you about taking up a timber claim?

(Testimony of Jackson Ownbey.)

A. Well, I think my brother was the first one that spoke to me about it.

Q. What was his name? A. Harrison.

Q. What did he say?

A. He was working for me at the time there, and he said—they was passing there and stopping with us very often, and I hadn't thought much about it—and he said, "Why mightn't we go and take up a claim too," and I told him I hadn't investigated anything about what there was to it, and I told him I would see Mr. Downs when he comes along again. He most generally stopped with us over night in passing, so I spoke to him when he come by the next time, and asked him about it, and he said he could locate us, and I asked him when a suitable time would come up, and he set a date, and we went up on that date.

Q. How far did you live from where the claim is?

A. Let's see. It is twenty-eight miles from Idaho City, and I lived eighteen miles from Idaho City. It would be about forty-six miles.

Q. Did you tell Mr. Downs how many you wanted to locate? A. Yes, sir.

Q. And he set a day for you to come?

A. Yes, sir.

Q. How long after you spoke to him was the time you went?

A. I don't remember about that exactly. It was some three or four days, if I remember right.

Q. Mr. Ownbey, with whom did you go to view this land? A. Pat Downs.

(Testimony of Jackson Ownbey.)

Q. Did he start from your home with you?

A. No.

Q. Who were the parties that went from your home to where this land is?

A. My wife and my father—my father's name is James—and Harrison Ownbey, my brother.

Q. And you furnished your own rig?

A. Yes, sir.

Q. How long had you known Mr. Downs?

A. I had known him for two or three months.

Q. And did I understand you to say that he had stopped at your place on his way back and forth?

A. Yes, sir.

Q. Did you know Mr. John I. Wells at that time?

A. No, sir, I did not.

Q. Did Mr. John I. Wells go over this timber claim with you?

A. No, sir.

Q. Was he up to where the claim was at the time you were there?

A. No, sir.

Q. Now, you were taken over this land by Mr. Downs?

A. Yes, sir.

Q. Were you told how much it would cost you to locate?

A. Yes, sir.

Q. How much was it?

A. \$25 a claim he charged us.

Q. And did you pay Mr. Downs?

A. No, I paid Mr. Wells, if I remember. I proposed paying him up there, and he told me to come to Boise and pay Wells.

Q. Did he tell you any other business to transact with Wells while you were there?

(Testimony of Jackson Ownbey.)

A. No, he didn't.

Q. Did Mr. Downs take you all over the land together?

A. Yes, sir, I and my father and brother, our claims was all together.

Q. And did he show you any other claims except those three or four to locate on?

A. He mentioned other parties that I knew as we went along, and he says so and so has this claim here, and so and so has another claim, as we went over the claims.

Q. And when he got to the claims that you finally located on, what did Mr. Downs say?

A. We was going along in the rig, if I remember, and he says, "Now, the first corner of this first claim is down here," and we turned off to the left, and we found a corner there with the numbers on it, and he showed us the north line, and we followed it up, and we went up the north line, and we crossed the three claims, I think it was on to the last claim, and then we switched across, and he showed us some corners and numbers on the south side, and then we went kind of down through them.

Q. Then he showed you over these three claims?

A. Yes, sir.

Q. And when you did go over them—when you went over one did he designate that as yours?

A. He gave us the privilege. He suggested, I think, that my father take the first one, so if he didn't want to go on any further he needn't to.

Q. Did he give you a description of those claims

(Testimony of Jackson Ownbey.)

at that time?

A. Yes, sir, he did when we got back to where Kempner lived up there.

Q. He wrote them out. Did he give each one a description, or did he give you the description of all of them?

A. I don't remember about that.

Q. Did he tell you where to take that description?

A. No, not that I remember of; I disremember that he did.

Q. How long after that did you go down to see Mr. Wells?

A. Well, we come down home, and in a day or two we come on down to Boise, I disremember, maybe two or three days after we made our location.

Q. And you went to Mr. Wells' office?

A. Yes, sir.

Q. And you paid him how much?

A. I paid him \$100.

Q. You paid for the location of all of them?

A. Yes, sir, I give him a check for all of them.

Q. Your wife's claim, your brother's claim, and your father's claim, and your own claim?

A. Yes, sir.

Q. Do you know who prepared this first paper you filed in the land office, your sworn statement?

A. Yes, sir.

Q. Who prepared that for you?

A. Harry Worthman.

Q. Did you know Mr. Harry Worthman at that time?

(Testimony of Jackson Ownbey.)

A. I knowed his face; I never had any business transaction with him.

Q. How did you come to go to Mr. Worthman's office to have this paper prepared?

A. If I remember right, a man by the name of Gibberd, an old friend of ours, I think he proposed that we go there.

Q. You met him after you left Wells?

A. Yes, sir, I met him on the corner of the Overland.

Q. You didn't ask Mr. Wells?

A. Not that I remember of.

Q. And Mr. Wells didn't tell you where to go to have these papers prepared?

A. If he did I don't remember anything about it.

Q. Your father and brother and wife were along at this time? A. Yes, sir.

Q. And all went to Wells' office?

A. I disremember whether they did or not. I went there to pay my location fees.

Q. What is your best recollection?

A. I couldn't say.

Q. Do you remember where you left them?

A. No, I do not.

Q. Do you know whether or not they did go to Mr. Wells' office with you?

A. No, I wouldn't say whether they did or not.

Q. Were your father and brother and wife with you when you met Mr. Gibberd on the street?

A. I couldn't say about that, but they was with me when we went up to the office.

(Testimony of Jackson Ownbey.)

Q. Did I understand you to say that Mr. Worthman prepared this first paper for you?

A. Yes, sir, that's the one I filed first in the land office.

Q. Did Mr. Worthman prepare your notice of publication which you filed?

A. I disremember about that paper, I'm sure. Probably the handwriting would show.

Q. And the non-mineral affidavit, do you know whether he prepared that or not?

A. No, I do not.

Q. Had you met Mr. John Kinkaid at that time?

A. No, sir.

Q. Did you know Mr. Louis M. Pritchard at this time? A. No.

Q. And were your father and brother and wife at Worthman's office when that paper was prepared?

A. Yes, sir, I think they were.

Q. Now, was anything said on any of these occasions about the money with which to make final proof? A. No.

Q. And you all went to the land office together?

A. Yes, sir.

Q. And filed your papers, and each filed his papers? A. Yes, sir.

Q. And do you know how much you paid at the land office at that time?

A. No, I disremember now.

Q. Did you pay for the expenses of all of them at the land office? A. Yes, sir, I did.

Q. That was the first time you went?

(Testimony of Jackson Ownbey.)

A. Yes.

Q. And then some time after that you made your final proof?

A. Yes, sir, I think it was eighty some odd days, if I remember right.

Q. Do you know who notified you at the time, of the date on which you were to make your proof?

A. No, I couldn't say that.

Q. Did you talk to Wells or Downs?

A. We had the time down that they gave us at the land office.

Q. And you went to the land office and made your proof? A. Yes, sir.

Q. Did your father and brother and wife go with you at that time? A. Yes, sir, they did.

Q. And did you furnish them the money with which they were to make their proof?

A. Yes, sir.

Q. Do you know how much it was a claim?

A. Well, it was something over \$400 a claim. It was about \$412.50, if I remember—something like that—a claim.

Q. And did you pay that money in check or cash?

A. I started to give him a check for the whole amount, and the receiver wouldn't take it; he said he couldn't take a check, and I asked him then how to do it, and he said if I would get a certified check—he said give each one a certified check for the amount that was coming from each one of them, so I issued four checks, one to my wife and father and brother,

(Testimony of Jackson Ownbey.)

and went to the Bank of Commerce and got them certified.

Q. You went yourself? A. Yes, sir.

Q. When did you deposit the money in the bank with which you had this check certified?

A. I couldn't say; I had been depositing it all along, every month, or every few days along when I would be down from home.

Q. Did you borrow any money with which you paid for any of these claims?

A. Yes, sir I did.

Q. How much?

A. It seems to me now that it was \$400.

Q. Do you know from whom you borrowed that?

A. Yes, sir.

Q. Who? A. Ben Stahl.

Q. When did you get that money from Mr. Stahl?

A. Some time before I was to prove up. I knew that I would be a little short, and I was down from up there and I asked Mr. Starn—he is a friend of mine—if he had it, and he said he had it perhaps, and he went and he had a certificate, if I remember, on the Capital State Bank, and he went and got it, and I asked him “Is that all you have got here?” And he says “Yes.”

Q. How much was that?

A. \$500, if I remember right—something like that. I said “You need that yourself and more too.” I said “I won't take that.” He said he thought old man Stahl had money, and we went over there. I knew old man Stahl some time before that,

(Testimony of Jackson Ownbey.)

and we went over, and he said he had it, and I give him my note, and Mr. Starn signed the note with me.

Q. And that was for how much?

A. \$400, I believe, or \$600, I wouldn't say which.

Q. Mr. Ownbey, I notice in this cross-examination before the land office that you have identified as being signed by you, question No. 16: "Did you pay, out of your own individual funds, all the expenses in connection with making this filing, and do you expect to pay for the land with your own money? Answer: Yes." Did you make that answer?

A. Yes, sir.

Q. The next question, 17, "Where did you get the money with which to pay for this land, and how long have you had same in your actual possession?" Answer: "I keep a deposit at the bank all the time. Have had this amount twelve months." Did you make that answer?

A. Yes; I don't remember about the twelve months now.

Mr. BUNDY.—That only relates to the \$400 for your own entry.

A. I hadn't had that \$400 though no twelve months, I know that.

Mr. GORDON.—Q. Now, after you proved up or made your final proof, how long was it before you made any negotiations to sell this property?

A. Well, I don't remember about that, just the date. I couldn't give it. It was some couple or three months, probably.

Q. Well, with whom did you negotiate for the

(Testimony of Jackson Ownbey.)

sale of the property?

A. The first party that I ever spoke to about it, I don't remember his name. He was a Portland man, I think, or representing a Portland firm. I forget his name now. I was down from up where I lived, and there was three or four of us got together and got to talking about it, and they proposed that we see this fellow and have a meeting with him.

Q. Who were these people?

A. I think George Butler and Edward Butler and Harry Eagleson, and I think Clyde Eagleson too probably.

Q. And where did you meet?

A. We met at the Idanha Hotel.

Q. Was it a casual meeting, or was it prearranged?

A. Well, we had seen this fellow and arranged to meet there at a certain hour.

Q. And did the man make you an offer for it?

A. Yes, sir.

Q. How much did he offer?

A. He offered us \$800.

Q. And you declined to take it?

A. Yes. He wanted us to guarantee him that there was so much timber on each claim; he had to have a guarantee that there was a million on each claim.

Q. And you couldn't make that guarantee?

A. No, sir.

Q. And who did you negotiate the sale with when you did sell?

A. Why, John Kinkaid.

(Testimony of Jackson Ownbey.)

Q. How did you happen to go to see Mr. John Kinkaid?

A. I heard at the time—someone told me that he was buying those claims, and I went to see him.

Q. You had never heard that John Kinkaid was buying claims until after you made your final proof?

A. No, sir, I had not.

Q. And you didn't know that Downs or Wells were interested in buying claims?

A. No, sir, I did not.

Q. And you went to see John Kinkaid?

A. Yes, sir.

Q. You had never seen him before?

A. No, sir, not that I know of.

Q. What did Kinkaid say about it?

A. He said he was buying, and he said he couldn't give but \$750, and I told him I had been offered \$800, but I didn't tell him why I didn't sell though.

Q. And did he buy it on the spot?

A. No. He said he would buy them, and I told him there was none of the folks down then, they was all up home, and I told him I would bring my wife down there any time he would set.

Q. And how much did he agree to give you?

A. He finally agreed to give me \$800.

Q. And you then went back with your wife?

A. Yes, sir.

Q. Were your father and brother along at that time? A. No, they were not.

Q. You didn't make the arrangements for them to sell?

(Testimony of Jackson Ownbey.)

A. Yes, I think I did, with Kinkaid. I told him that I had those claims, and he could have them all if he would give that much for them, as far as I was concerned.

Q. And then you returned to his office at another date?
A. Yes, sir.

Q. And you and your wife signed the deed?

A. Yes, sir.

Q. And did you sign the deed in Mr. Kinkaid's office?
A. Yes, sir.

Q. Who prepared that deed?

A. He did, I think.

Q. Now, do you remember whether you went to Mr. Kinkaid's office or Mr. Worthman's office and got that deed?

A. I am pretty sure it was in Kinkaid's office.

Q. Had you engaged Mr. Worthman to prepare a deed for you?

A. No. Maybe I did too. I couldn't say about that now, it has been so long ago. I wouldn't say positively. It does kind of come to me something like that, since you mention it. I couldn't positively say about that.

Q. Do you remember whether Mr. Worthman was present when you and your wife signed the deed and took the acknowledgment?

A. I wouldn't say positively about that. I can't remember whether he was or was not.

Q. You don't remember seeing Mr. Worthman?

A. I do not.

Q. And you don't remember whether Mr. Worth-

(Testimony of Jackson Ownbey.)

man took your acknowledgment or not?

A. It seems to me that in connection with the deed in something now that we had some transaction with Worthman.

Q. Do you remember whether or not Worthman paid you for this property, or was it Kinkaid?

A. It was Kinkaid; he gave me his own personal check.

Q. Do you remember whether Mr. Gibberd took you up to Worthman's office about this property?

A. No, I don't think he did. He went up with us when we made our filings.

Q. Did you sign this deed in blank, or were the names of the parties in it when you signed it?

A. Well, I don't remember about that now.

Q. What is your best recollection? Was the party to whom you were to convey the property, the name there, at the time you sold it, or was it not?

A. I couldn't say as to that. I think probably it was, though. I remember looking over the deed.

Q. Do you remember whether at the time you signed the deed the consideration of \$950 was in the deed?

A. No, I don't remember about that.

Q. I will ask you to look at that deed and see. "Horace S. Rand" is in there in entirely different writing from the other part of the deed, and so is the writing "nine hundred and fifty," and "Des Moines, Iowa." Do you remember whether Mr. Worthman drew the body of that deed and you acknowledged it before him, and later the name and the consideration was put in by Mr. Kinkaid?

(Testimony of Jackson Ownbey.)

A. If I acknowledged that deed before him it was in Kinkaid's office, I am pretty sure. I couldn't say in regard to Mr. Rand's name there, and the consideration there, I couldn't swear positively about that.

Q. You didn't know Mr. Rand?

A. No, sir, I did not.

Q. Never had heard of him? A. No.

Q. And Mr. Kinkaid paid you the money at the time you made that deed? A. Yes, sir.

Q. Did you ever make another deed for this property? A. No, sir.

Q. Were you ever requested to?

A. I never was.

Q. Do you remember when you paid the money into the land office when you made your final proof, they gave a receipt for it? A. Yes, sir.

Q. What did you do with that receipt? Did you take that along to Kinkaid?

A. I think I did.

Q. Now, did you and your wife execute another deed at that time for her property?

A. Yes, she signed a separate deed.

Q. Did Mr. Kinkaid give you that money in cash or in check? A. In check.

Q. For \$1600, or two checks for \$800?

A. He give me two checks each one for \$800.

Q. And what did you do with those checks?

A. I deposited them in the Bank of Commerce to my credit.

Q. Did you give your wife her \$800?

(Testimony of Jackson Ownbey.)

A. No.

Q. Did you pay Mr. Worthman any money for drawing the papers for you that he did?

A. I did. I paid him \$10 for making out the four papers.

Mr. GORDON.—We offer in evidence timber and stone land sworn statement, signed Jackson Ownbey, dated August 30, 1902; notice of publication, dated the same day; non-mineral affidavit, of the same date; testimony of claimant, dated December 11, 1902; the cross-examination attached, identified by Mr. Ownbey; the testimony of the witnesses before the land office on final proof; the register's and receiver's certificates, dated December 11, 1902; and the deed, dated February 9, 1903, by Jackson Ownbey, and wife, Mary E., to Horace S. Rand, consideration \$950; and certified copy of the patent; all to the northwest quarter of section 13, township 7 north of range 7 east, Boise Meridian.

(Marked Plaintiff's Exhibit No. 72A to 72I, inclusive.)

Cross-examination.

(By Mr. BUNDY.)

Q. Mr. Ownbey, state to what extent, during the fall of 1902, people were going from Boise up into that country for the purpose of locating claims.

A. Well, they passed my house most every day, more or less.

Q. Well, some days one load and some days several loads? A. Yes, sir.

Q. And that kept up practically all during Au-

(Testimony of Jackson Ownbey.)

gust, September, and October, 1902?

A. Yes, sir.

Q. And I guess some later than that. Your first talk with Pat Downs then was when you asked him if he could locate you on a piece?

A. Yes, sir, in regard to the timber.

Q. Did Mr. Downs at that time tell you that you was to locate it for anybody else but yourself?

A. No.

Q. Did he suggest to you that you would be asked to turn it over to anybody else as soon as you got title?

A. No, sir, he did not.

Q. Did he make any suggestion to you at all as to what you should do with the land when you got title?

A. No, sir, he did not.

Q. When you went up there and hired Pat Downs to locate you, did you understand that you had to take any claim Pat pointed out?

A. No, sir.

Q. You understood that you were the one to make the selection?

A. Yes, sir.

Q. And if it hadn't been satisfactory to you you wouldn't have taken it?

A. No, sir.

Q. You never had had any talk with John I. Wells at all at that time?

A. No, sir, I never saw him.

Q. You understood that Mr. Downs and Mr. Wells were in partnership?

A. I didn't, at that time.

Q. When he told you to pay Mr. Wells the money?

A. Yes, he called him his partner.

No. 1883

UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE NINTH CIRCUIT.

TRANSCRIPT OF RECORD.

THE UNITED STATES OF AMERICA (Complainant),
Appellant,

vs.

THE BARBER LUMBER COMPANY (a Corporation),
(Defendant), Appellee.

VOLUME IV.

(Pages 1201 to 1600, Inclusive.)

Upon Appeal from the United States Circuit Court
for the District of Idaho, Central
Division.

FILED

SEP 19 1910

No. 1883

UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE NINTH CIRCUIT.

TRANSCRIPT OF RECORD.

THE UNITED STATES OF AMERICA (Complainant),
Appellant,

vs.

THE BARBER LUMBER COMPANY (a Corporation),
(Defendant), Appellee.

VOLUME IV.

(Pages 1201 to 1600, Inclusive.)

**Upon Appeal from the United States Circuit Court
for the District of Idaho, Central
Division.**

(Testimony of Jackson Ownbey.)

Q. So that is the way you came to go to Mr. Wells to pay him the location fee?

A. Yes, sir.

Q. Did you have any other business with Mr. Wells at that time?

A. No, not that I remember of.

Q. Mr. Wells didn't make any suggestion as to buying the land from you, did he? A. No, sir.

Q. As a matter of fact, nobody had ever suggested to you who you should turn that land over to until after you had made final proof and were trying to sell it yourself? A. No, sir.

Q. In your first paper you testified that you had not made any agreement with any person or persons, by which the title you might acquire from the Government of the United States would inure to the benefit of any person except yourself. That was absolutely true, was it not? A. Yes, sir.

Q. And was absolutely true at the time you made your final proof? A. Yes, sir.

Q. Mr. Ownbey, I don't know whether you know it or not, but if you don't you ought to, the United States of America, by these gentlemen here and other officials, have filed a complaint in this action, in which they charge that you entered into a wicked and unlawful conspiracy to defraud the United States out of the piece of land that you entered. Is that true or false? A. It is false.

Q. And it is also alleged in that bill of complaint that, for the purpose of defrauding the United States out of the land you were induced by the Barber Lum-

(Testimony of Jackson Ownbey.)

ber Company and the other defendants to go to the land office and swear falsely as to what you were to do with that land. Is that allegation true or false? A. It is false.

Q. And it is charged in that bill of complaint that when you entered this land you did so under an agreement that just as soon as you got title you would turn it over to the defendants or to some person they would direct. Is that allegation true or false? A. It is false.

(Witness excused.)

[Testimony of Mary E. Ownbey, on Behalf of the Complainant.]

MARY E. OWNBEY, produced as a witness on behalf of the complainant, being first duly sworn, testified as follows:

Direct Examination.

(By Mr. GORDON.)

Q. Your name is Mary E. Ownbey?

A. Yes, sir.

Q. And you are the wife of Mr. Jackson Ownbey, who has just testified? A. Yes, sir.

Q. You entered a claim under the Timber and Stone Act in August, 1902, did you? A. Yes, sir.

Q. I show you timber and stone land sworn statement, dated August 30, 1902, and ask you if you signed that paper? A. Yes, sir.

Q. I show you the testimony given by Mary E. Ownbey on final proof, dated December 11, 1902, and ask you if you signed that paper.

(Testimony of Mary E. Ownbey.)

A. Yes, sir.

Q. I show you the cross-examination attached, signed Mary E. Ownbey, and ask you if that is your signature?

A. Yes, sir.

Q. I show you deed by Mary E. Ownbey and Jackson, her husband, dated February 9, 1903, to Horace S. Rand, and ask you if that is your signature to that paper.

A. Yes, sir.

Q. And that is also your husband's signature to it?

A. Yes, sir.

Q. Mrs. Ownbey, when you entered this land did you know Mr. John I. Wells?

A. No, sir.

Q. Did you know Mr. Patrick Downs?

A. Yes, I knew him.

Q. Had you talked with him about taking up a claim?

A. No, sir, I never talked with Mr. Downs.

Q. Who spoke with you about taking up a claim?

A. My husband first spoke with me about it.

Q. Did anyone else speak with you?

A. No.

Q. And your husband arranged the party with which you went?

A. Yes, sir.

Q. And you went up to Mose Kempner's ranch?

A. Yes, sir, we stayed all night there.

Q. Did you understand what you were to pay for the locating of this land?

A. Yes, I think I knew what it was a day or so before we went up there.

Q. And did you pay a locating fee?

A. My husband paid it.

Q. To whom did he pay it?

(Testimony of Mary E. Ownbey.)

A. I don't remember who he did pay it to.

Q. And you filed that first paper I showed you, the sworn statement, in the land office, did you?

A. Yes, sir,

Q. Mr. Downs located you, didn't he?

A. Yes, sir.

Q. And did he take you out over the land and show you the land you were to locate on?

A. Yes, I rode a horse over the claim.

Q. And when you got to the claim that you located on, did he say "this is the claim for you"?

A. No, he didn't say. He just said that was a claim I could take if I wanted it. That's the way I understood it. If I didn't want it I didn't need to take it.

Q. And it suited you, didn't it?

A. Yes, sir, it was good timber.

Q. And then you came down here to Boise, you and your husband? A. Yes, sir.

Q. And your father in law and brother in law?

A. Yes, sir.

Q. To whose office did you go after you reached Boise?

A. I don't remember. I suppose it was the land office, I suppose—I don't remember, though.

Q. Did you go to Mr. Wells' office?

A. No, sir, I didn't see him, until I met him up here the other day.

Q. Did you have a talk with him up here?

A. No, sir, never spoke to him.

Q. Were you introduced to him?

(Testimony of Mary E. Ownbey.)

A. No, sir.

Q. Do you know where you received these papers that you filed in the land office?

A. The description of the land?

Q. Yes.

A. I think Mr. Downs gave them to us; we brought them to Boise with us, that is, my husband did.

Q. Did you see your husband with them?

A. Yes, I think I did.

Mr. BUNDY.—He is asking about that paper he has in his hand, not the description Mr. Downs gave you.

The WITNESS.—I don't remember. We had the description of the land.

Mr. GORDON.—Q. Did you and your husband come to Boise and go right to the land office, or did you go to somebody else's office before you went there?

A. We went right to the land office.

Q. Who did you meet there at the land office?

A. I don't remember; there was several there.

Q. Did Mr. Gibberd go along with you?

A. I don't remember.

Q. Did you see Mr. Gibberd there in the land office?

A. I don't remember whether he was there or not.

Q. Do you know Mr. Harry S. Worthman?

A. Yes, sir.

Q. Did you meet him there that day?

(Testimony of Mary E. Ownbey.)

A. No, I don't think we did. I don't remember whether we did or not.

Q. When did you meet Mr. Worthman?

A. I don't remember.

Q. Were you ever in his office?

A. I don't remember whether I went to his office or not.

Q. What is your best recollection?

A. I don't think that I went—I don't know, maybe I did. I don't remember for sure whether I went or not.

Q. Are you positive that when you came down here to file you didn't stop at anyone's office, but went directly from your home to the land office, when you filed your first paper there?

A. I don't remember.

Q. Do you know whether you did stop anywhere or not?

A. No, we didn't go any place except the land office. We had some papers made out; Harry Worthman made out some papers.

Q. Where did Harry Worthman make out the papers?

A. He made them out in his office, I guess.

Q. Were you there when he made them out?

A. Yes, I was there, I think.

Q. That was before you went to the land office?

A. Yes, sir.

Q. Now, were you at Mr. Wells' office with your husband when he paid him the locating fee?

A. No, sir, I didn't go.

(Testimony of Mary E. Ownbey.)

Q. Where did you stay then?

A. I stayed at the hotel.

Q. Which hotel? A. At the Pacific.

Q. Did you have a room there or did you go to somebody's office at the Pacific Hotel?

A. No, I stayed there; we had dinner there that day, and then we went down to Mr. Starn's that night, and stayed all night.

Q. When your husband went to Mr. Wells' office, where did you stop at the hotel? Did you have a room, or were you eating your dinner at that time?

A. I can't remember just how that was; I can't remember whether I had gone on down to Starn's while he went up there, or whether I stayed at the hotel.

Q. Now, did you pay any money of your own into the land office on that occasion, when you went there the first time? A. No, I don't remember of it.

Q. All expenses that were paid there for you were paid by your husband? A. Yes, sir.

Q. And then it came time to make your final proof. Do you remember the occasion of your coming to Boise to make that? A. Yes, sir.

Q. Do you remember how the money was paid? Do you know how much was paid at the land office when you made your proof?

A. I don't remember the exact amount.

Q. Did you pay it?

A. My husband paid it.

Q. Do you remember whether he paid it in check or in cash? A. I don't remember which it was.

(Testimony of Mary E. Ownbey.)

Q. You were there all the time he was there?

A. Yes, sir.

Q. Was anything special said about how it should be paid?

A. No, sir; they asked me where I got the money, and I told him it was in the bank, that we run the Half-way House, and that we had the money in the bank, and that he would pay them.

Q. Do you remember whether your husband gave a check there at that time, or whether he went out and kept you waiting there?

A. I didn't stay there long; I guess he give them a check. I don't remember though, for sure.

Q. Then after you had paid this money into the land office, this four hundred and some odd dollars, did you go directly home, or did you go to somebody's office from the land office?

A. We went directly home.

Q. They gave you a receipt for that, didn't they?

A. I don't remember.

Q. Then when did you come to Boise again with reference to this property?

A. I don't remember, but it was some time before I came.

Q. How long—two months?

A. Yes, it must have been, I guess.

Q. And with whom did you hold your negotiations for the sale of this property?

A. I don't remember. My husband sold it. I don't remember.

Q. Did you go to Mr. Worthman's office the day

(Testimony of Mary E. Ownbey.)

you sold? A. No, sir.

Q. Did you see Mr. Worthman that day?

A. No, sir.

Q. When you signed this deed, didn't you acknowledge it before a notary public?

A. I don't remember.

Q. In whose office was the transaction consummated? In whose office did you get the money?

A. Kinkaid's.

Q. Had you known Mr. Kinkaid before?

A. No, sir.

Q. And was Mr. Worthman at Mr. Kinkaid's office? A. I don't remember.

Q. Can you tell who was in Mr. Kinkaid's office that day?

A. No, I couldn't tell you anyone that was there except Mr. Kinkaid and my husband.

Q. Did you sign one deed in Mr. Kinkaid's office that day, or two?

A. I don't remember; I suppose I signed two, his and mine.

Q. And did Mr. Kinkaid pay you that day?

A. He paid my husband, yes.

Q. Do you know whether he paid him in check or cash? A. He paid him in checks.

Q. One check or two?

A. I think it was all in one, but I ain't sure.

Q. You are sure that Mr. Worthman wasn't at the office of Mr. Kinkaid when you signed and acknowledged this deed?

A. I don't remember. They was all strange to

(Testimony of Mary E. Ownbey.)

me; if there was anyone there I don't remember.

Q. Can you remember whether there was anyone else except yourself and Kinkaid and your husband?

A. No, I can't remember.

Q. Do you know whether you went to Mr. Worthman's office that day?

A. No, I don't remember about it.

Q. Do you know whether or not Mr. Kinkaid had this deed you signed at his office when you went there?

A. I don't remember.

Q. Do you know Mr. Horace S. Rand?

A. No, sir.

Q. Did you ever hear of him before?

A. I heard of him, yes, but I never knew him.

Q. Did you read the deed over that you signed in Mr. Kinkaid's office?

A. Yes, sir.

Q. Do you know whether Mr. Horace S. Rand's name was in that deed at that time?

A. No, sir, I don't know whether it was or not.

Q. Do you know whether at the time you signed the deed it stated that the consideration was \$950?

A. I don't know what it was; I don't remember.

Q. What did you do with your \$800—put it in the bank?

A. Yes, we just put it in together.

Q. Were you ever asked to make any other deed?

A. No, sir.

Mr. GORDON.—We offer in evidence the timber and stone land sworn statement of Mary E. Ownbey, dated August 30, 1902; the notice of publication of the same date; the non-mineral affidavit, of the

(Testimony of Mary E. Ownbey.)

same date; her testimony on final proof, dated December 11, 1902; Cross-examination attached, signed Mary E. Ownbey, which she has identified; the register's and receiver's certificates, dated December 11, 1902; and the deed, dated February 9, 1903, made by Jackson Ownbey and Mary E. Ownbey to Horace S. Rand, consideration \$950; and certified copy of the patent; all to lot 2 and the southwest quarter of the northeast quarter, and the west half of the southeast quarter, of section 3, in township 7 north of range 7 east, Boise Meridian.

(Marked Plaintiff's Exhibit No. 73A to 73H inclusive.)

Cross-examination.

(By Mr. BUNDY.)

Q. Now, Mrs. Ownbey, as I understand it, the paying of the money for the purchase of this land from the Government, and the expense incident to making your filing, were all conducted by your husband? A. Yes, sir.

Q. And the negotiations for the sale of the land, after you had title, and the collecting of the money from Mr. Kinkaid, was also attended to by your husband? A. Yes, sir.

Q. Now, Mrs. Ownbey, at the time you made your first filing upon this land, had you ever had any talk with anybody as to what you would do with the land when you got title? A. No, sir.

Q. Had anybody suggested to you who you would sell it to? A. No, sir.

Q. Or had you offered it for sale to anybody?

(Testimony of Mary E. Ownbey.)

A. No, sir.

Q. Was that same thing true when you made your final proof? A. Yes, sir.

Q. Now, Mrs. Ownbey, these gentlemen representing the Government have seen fit to charge you, in this complaint, with having gone to the land office and testified falsely at the instance and request of the Barber Lumber Company and the other defendants in this action. Is that true or false?

A. It is false.

Q. And it is alleged in this complaint that at the time you made this timber and stone entry you had an agreement that just as soon as you got title you would turn it over to the defendants, or to some person they would direct. Is that true or false?

A. It is false.

Q. And it is alleged that for the purpose of acquiring title to this piece of land you went to the land office and perjured yourself. Is that true or false? A. It is false.

(Witness excused.)

An adjournment was here taken until 2 P. M., at which time the hearing was resumed, the Examiner and counsel for the respective parties being present.

[Testimony of Delilah Bayhouse, on Behalf of the Complainant.]

DELILAH BAYHOUSE, produced as a witness on behalf of the complainant, being first duly sworn, testified as follows:

Direct Examination.

(By Mr. GORDON.)

Q. You are Mrs. Delilah Bayhouse?

A. Yes, sir.

Q. What is your husband's name, Mrs. Bayhouse?

A. Mr. Hugo Bayhouse.

Q. How long have you resided in Boise?

A. Twenty-six years.

Q. Is your husband living?

A. Yes, sir.

Q. Did he take up a timber and stone claim?

A. No, sir.

Q. You took up a claim in September, 1902, did you?

A. Yes, sir.

Q. Where do you reside in Boise?

A. At that time at 1018 O'Farrell.

Q. Where do you reside now?

A. 816, Ninth and Pueblo.

Q. I show you timber and stone land sworn statement, dated September 24, 1902, and ask you if that is your signature.

A. Yes, sir.

Q. I show you the final proof of Delilah Bayhouse, dated January 28, 1903, and ask you if that is your signature and you signed that.

A. Yes, sir.

Q. I show you cross-examination, taken at the

(Testimony of Delilah Bayhouse.)

land office at that time, and ask you if you signed that.

A. Yes, sir.

Q. I show you deed, dated February 12, 1903, made by Hugo Bayhouse and Delilah Bayhouse to Horace S. Rand, and ask you if you signed that.

A. Yes, sir.

Q. Is that your husband's signature?

A. Yes, sir.

Mr. KEIGWIN.—Mr. Bundy, in offering these papers in evidence there is no question to be made, I suppose, that they are the same papers shown to the witness?

Mr. BUNDY.—No.

Mr. KEIGWIN.—We have marked them and identified them as we have gone along. I suppose that it may be agreed that they are the same papers.

Mr. BUNDY.—We had better agree to stipulate now that all the files are offered in a bunch, without any identification. Why wouldn't that be a good plan, just offer the files, without taking a lot of time here; it's unnecessary.

Mr. GORDON.—The only way I can see that I could shorten it, if I had the time I should mark these as exhibits and then refer to them.

Mr. KEIGWIN.—We can put it this way: We offer the papers identified by the witness.

Mr. BUNDY.—I am perfectly willing to stipulate now that every entryman you put on the stand, that all the papers relating to filing and final proof, or on file in the land office, should be deemed in evidence.

Mr. KEIGWIN.—We agree to that, but that

(Testimony of Delilah Bayhouse.)

won't preclude the necessity of identifying the papers by the witnesses.

Mr. BUNDY.—The only object in making the stipulation is to save time. I don't care to make that stipulation and then go through the formality of identifying them all. If you are going to do that I don't care to stipulate.

Mr. KEIGWIN.—As I understand it, we have a stipulation here that all the files offered here are from the files of the general land office.

Mr. BUNDY.—We haven't any such stipulation. We had a stipulation that you needn't identify them as the files of the land office.

Mr. KEIGWIN.—We have to show the witness the papers for the purpose of identifying the party that made that entry.

Mr. BUNDY.—See if you can't do that all at one time, without going through the dates the second time.

Mr. GORDON.—Q. Mrs. Bayhouse, who spoke with you first about taking up a timber and stone claim?

A. My brother in law, George Bayhouse.

Q. What did he say to you?

A. Very little; just asked me if I wanted to take up a claim.

Q. Did he tell you how much it would cost you?

A. Yes, in the neighborhood of \$400, \$412, or something like that.

Q. Did he tell you that you could sell the land after you got it?

(Testimony of Delilah Bayhouse.)

A. I don't remember whether he did or not.

Q. Did he tell you you could make so much by taking up one of these claims?

A. No, sir, he didn't tell me.

Q. Did you have any idea of the possibility of making a profit out of it at that time?

A. Not just at that time.

Q. How long after that time did you have one?

A. I don't know that I thought much about it at all. George came over and asked if I would like to take up a timber claim, and I told him "yes."

Q. Did you know of anybody that was selling them? A. No, sir.

Q. And how long after that was it that you started from here with the view of locating?

A. I don't know just how long it was; it was soon after that.

Q. Did you go with a party?

A. With George and Frank Bayhouse, and Emma Bilderback, my sister in law.

Q. Do you know who arranged for that party?

A. I do not.

Q. Did you pay any of the expenses?

A. I paid my share.

Q. How much did you pay?

A. I paid the location fee and expenses of the trip—I don't know just how much it was—in the neighborhood of \$40 or \$50.

Q. Did you help pay the expense of the team?

A. Yes, sir.

Q. Do you know who it was that located you?

(Testimony of Delilah Bayhouse.)

A. Mr. Patrick Downs.

Q. Did you know that Mr. Downs was going to locate you before you left Boise?

A. No, sir.

Q. Did he locate you the same time he located the others? A. Yes, sir.

Q. Take you all out together?

A. We four went out together.

Q. State what he did.

A. We left Kempner's ranch, and from there we went on horseback about seven miles, and then we went over the ground on horseback; we went out in the morning and got back that evening.

Q. How many claims did he show you personally?

A. He showed me my claim, and then I rode with the others to their claims. We went in a bunch and came back in a bunch.

Q. Did you know Mr. John I. Wells, at that time?

A. I met him out there at Kempner's ranch.

Q. Was he with Mr. Downs?

A. I think he went out with us that day, or was with the party.

Q. Do you know where you met him to go?

A. I think he was at Kempner's ranch when we got there.

Q. Did he go over the ground with you?

A. I think so.

Q. Would you be positive?

A. I couldn't be positive. I remember him

(Testimony of Delilah Bayhouse.)

standing there with us, but whether he rode with us all over the ground I am not really positive.

Q. He went from Kempner's ranch with you anyhow? A. I think so.

Q. Did you pay the locating fee yourself?

A. My brother in law did it for me; he tended to the business part of it for me.

Q. And you all returned to Boise in a party?

A. All together, the four of us.

Q. Were you given a description of your land there? A. Yes, sir.

Q. He didn't make that out and give it to your brother in law?

A. We went over the land. What do you mean by description?

Q. I mean, did he write out a description that you could take back with you to have your papers prepared?

A. I don't remember that he did.

Q. Where did you go to have your first papers prepared? A. I don't remember that.

Q. Do you remember this first statement that you filed in the land office? A. Yes.

Q. Do you remember where you first saw that paper? A. At the land office, I guess.

Q. Did you go to Mr. Wells' office after you returned?

A. I never was at his office that I know of.

Q. Did you go to Kinkaid's office after you returned? A. Yes, I was at Kinkaid's office.

Q. Before you went to the land office?

(Testimony of Delilah Bayhouse.)

A. No, sir.

Q. You did not know who prepared that sworn statement for you? A. No, sir, I couldn't say.

Q. Do you know who went to the land office with you?

A. My sister in law went for one.

Q. Who else?

A. I don't remember that anyone else went.

Q. And you received that paper in the land office?

A. I couldn't tell you, to tell you the truth.

Q. What is your best recollection? Did you take it to the land office with you, or was it there?

A. That is a part of it that I can't remember. George tended to the business for me, and there is some details of it that I can't remember to save my life, because I have been very sick in the meantime, and I have been trying to think it out and I can't do it.

Q. Do you remember how much you paid, when you went to the land office the first time, for advertising and filing fees?

A. I think it cost me \$412.

Q. The first time you went, I mean.

A. I don't remember.

Q. This non-mineral affidavit that you identified, dated September 24, 1902, do you know who prepared that paper for you, or where you got that?

A. No, I do not.

Q. Then, in the course of several months, after you filed your first papers in the land office, do you remember the occasion of making your final proof?

(Testimony of Delilah Bayhouse.)

A. I do not.

Q. The time you paid four hundred and something into the land office?

A. I remember when I went and did that, but I don't remember the date. I remember going to the land office.

Q. Do you remember who went with you at that time?

A. Mrs. Bilderback, my sister in law.

Q. Anybody else?

A. Not that I remember.

Q. Do you remember whether you paid that \$400 in cash or in check?

A. In cash.

Q. Do you remember where you got the \$400 from that you paid?

A. Yes, sir.

Q. Where?

A. A portion of it was mine, and a portion of it I borrowed.

Q. Who did you borrow it from?

A. My sister, Mrs. J. E. Hyde, then living in Baker City, Oregon.

Q. Do you know how much it was that you borrowed from her?

A. Not exactly, I don't.

Q. Have you an idea?

A. I can't remember just exactly that. I know I had money, because I was dressmaking at the time, but just how much I had and how much she let me have I can't say for sure.

Q. Do you remember whether it was \$50 or what?

A. Oh, it was more than that; it was several hun-

(Testimony of Delilah Bayhouse.)

dred dollars, two hundred and something; I wouldn't be sure; I couldn't make a true statement of that.

Q. Did you borrow any from anybody else?

A. No, sir.

Q. Did you give her a note for it?

A. No, sir.

Q. Do you remember when you repaid it?

A. When I sold my timber.

Q. Do you remember, in making your final proof, you were asked this question: "Did you pay, out of your own individual funds, all the expenses in connection with making this filing, and do you expect to pay for the land with your own money?" Answer: "Yes." Do you remember that question and that answer being made?

A. I believe they did ask me that question.

Q. The next question, No. 17: "Where did you get the money with which to pay for this land, and how long have you had same in your actual possession?"

Mr. BUNDY.—I want to interpose an objection, for the reason that those are questions that the land department had no right or authority to ask, and that these witnesses were under no obligation to answer, and were wholly incompetent, irrelevant and immaterial.

Mr. GORDON.—(Continuing.) And that you made this answer: "The money I earned in my business as dressmaker. Have owned this amount four or five years and some longer." Do you remember that?

(Testimony of Delilah Bayhouse.)

A. Yes, sir, I have. I have had more than that amount and earned more than that amount.

Q. How long after you went to the land office and paid this \$400 in and made your proof did you meet Mr. Kinkaid?

A. I can't tell you just how long it was.

Q. Had you ever met him before that?

A. Yes, sir.

Q. Where did you meet him?

A. In the Idaho Basin.

Q. Was that when you went up there the first time?

A. No, sir, it was a couple of years before, at my husband's mining claim.

Q. How long after you made your proof did you meet him again?

A. I don't remember how long it was.

Q. Have you an idea? A. No, sir.

Q. How long before you sold your property did you meet him?

A. I don't know that either.

Q. And to whom did you sell your property?

A. I don't know who I sold to.

Q. With whom did you make the negotiations for the sale of your property?

A. I don't know that I made any.

Q. Well, you made this deed, didn't you?

A. I suppose so; that is my deed; and Henry told us we could sell our timber, and so we sold it, and Mr. Kinkaid was the man that gave us the check for it.

(Testimony of Delilah Bayhouse.)

Q. Did you go to his office about it?

A. Yes, sir.

Q. Who was there with you?

A. Henry was there, and my sister in law, Mrs. Bilderback, and myself.

Q. And did Mr. Kinkaid prepare this deed while you were there?

A. I can't remember that. We were there quite awhile.

Q. Did you have any conversation with him about how much you were to receive for this property?

A. No, sir.

Q. Do you know how much he gave you for it?

A. Yes, sir.

Q. How much? A. \$800.

Q. Was that in check or cash? A. Check.

Q. Did you get that check cashed at the bank, or what did you do with the check?

A. At the bank, I think.

Q. Do you remember which bank?

A. No, sir.

Q. Did you place it to your credit in the bank?

A. No, sir.

Q. And how long after you received that check did you repay your sister what you had borrowed from her?

A. I think I sent it to her the day I got it; the day I got the check I paid her back, or immediately afterwards if it was too late that day, I don't remember, but right away.

Q. Where was your husband at the time you

(Testimony of Delilah Bayhouse.)

signed this deed? A. In the Idaho Basin.

Q. How far is that from here?

A. Forty-five miles.

Q. That was the only offer you had for the sale of this property?

A. All I know about. It was my brother in law that did the business. I had nothing to do with it, or had no talk with anybody.

Mr. GORDON.—We offer in evidence the sworn statement; the testimony given on final proof; and the cross-examination; the notice of publication; the non-mineral affidavit; the receiver's receipt and the register's certificate, dated January 28, 1903; and the deed, dated February 12, heretofore identified by Mrs. Bayhouse; also the certified copy of the patent, dated May 24, 1904; all to the northwest quarter of section 27, township 7 north of range 8 east, Boise Meridian.

(Marked Plaintiff's Exhibit No. 74A to 74O inclusive.)

Cross-examination.

(By Mr. BUNDY.)

Q. Mrs. Bayhouse, did I understand you to say that your brother or brother in law, or some of them, arranged for the sale of this land?

A. Henry, I think, was the one that told us.

Q. And how much did you say you got for it?

A. Eight hundred dollars.

Q. So that the question of making a price with Mr. Kinkaid was something you had nothing to do with?

(Testimony of Delilah Bayhouse.)

A. I never had anything to do with it.

Q. You simply went up and signed the deed and got the money Mr. Kinkaid had promised your brother in law?

A. I presume so. I had no talk with Mr. Kinkaid at all.

Q. At the time you filed your first papers in the land office in this matter, Mrs. Bayhouse, was there in existence any agreement of any kind, written or verbal, express or implied, by which you had promised or agreed to turn this title over to anybody when you got title to it?

A. No, sir.

Q. Was there any such agreement at the time you made your final proof?

A. No, sir.

Q. Up to the time you made your final proof had anybody suggested to you to whom you were to transfer it?

A. No, sir.

Q. Had anybody offered to buy it, or had you offered to sell it at any time up to the time you made final proof?

A. No, sir.

Q. Your understanding of the law at that time, I presume, was, like the rest, that you had a right to sell it after you got final receipt, and not before.

A. Yes, sir.

Q. And so, up to that time you made no effort to sell, and nobody made any effort to buy it.

A. No, sir.

Q. These gentlemen representing the Government have charged in the bill of complaint that you entered into an unlawful and wicked conspiracy for the purpose of defrauding the United States out of this land.

(Testimony of Delilah Bayhouse.)

Is that true or false? A. It is false.

Q. And they state in this complaint that you entered into an agreement with the Barber Lumber Company and the other defendants, by which you agreed to go to the land office and enter this land, and when you got title to it turn it over to them. Is that true or false? A. No, sir, it is false.

(Witness excused.)

[Testimony of Sanora A. Joplin, on Behalf of the Complainant.]

SANORA A. JOPLIN, produced as a witness on behalf of the complainant, being first duly sworn, testified as follows:

Direct Examination.

(By Mr. GORDON.)

Q. Mrs. Joplin, where do you reside?

A. Seventeenth street, 409.

Q. How long have you resided there?

A. I moved there in December, 1903.

Q. Where did you reside just prior to that time?

A. Well, I lived on Bannock street for about six months before I moved there, and before that I lived in South Boise.

Q. How long have you lived in Boise all together?

A. Since 1903; I came here in June, in the city.

Q. Where did you live prior to that time?

A. South of the river, in what is called South Boise.

Q. How long have you lived in Idaho?

A. I came to Idaho in 1879.

(Testimony of Sanora A. Joplin.)

Q. You took up a claim under the Timber and Stone Act in 1902, did you?

A. I think it was 1902, as near as I remember, in the fall of 1902, I think.

Q. I show you the sworn statement, dated October 2, 1902, and ask you if you signed that paper.

A. Well, that is my signature—I suppose I did.

Q. Is that your signature to the testimony given on final proof? A. Yes.

Q. And is that your signature to the cross-examination attached? A. Yes.

Q. Is that your signature to the deed dated March 25, 1903? A. Yes.

Q. Mrs. Joplin, who first called your attention to the fact that there were timber claims to be taken up, open to entry?

A. I couldn't say who I first heard speak about it; I might have read it in the papers, I don't remember. I don't remember the conversation at first at all.

Q. Did you know Mr. John Kinkaid at the time you took up your claim?

A. No, sir, I never saw him until after I had taken it up.

Q. Did you know Mr. Louis M. Pritchard at the time you took up your claim? A. No, sir.

Q. Did you know Mr. John I. Wells at that time?

A. Never had seen the gentleman that I know of.

Q. Did you know Mr. Patrick Downs?

A. No, sir, I never saw him until I took up a claim.

(Testimony of Sanora A. Joplin.)

Q. Where did you go to locate on this property?

A. It was, I think, as well as I remember, it was east of Crooked river, east of Mr. Kempner's ranch.

Q. Did you go there alone, or with whom did you go?

A. I went in company with my son, Andrew F. Joplin, and I think Mr. Wilson and his wife perhaps was in the crowd with us.

Q. Do you know Mr. Walter Joplin?

A. He is my son.

Q. Where did you start from to go up to view this land?

A. We started from home when we went, but we had been in the mountains up close to the land fishing and hunting and on a pleasure trip several times before we had heard of this land, but some time before we went up we left home.

Q. Did all of these people leave from your house?

A. No, my son and I went from our home, and we came into town, and Mr. and Mrs. Wilson went with us. I think that is the way, as well as I remember.

Q. Who introduced you to Mr. Downs when you got up to Kempner's ranch?

A. I couldn't tell you; there was quite a number of people there from Boise. Mr. and Mrs. Kempner were there, and I couldn't tell you whether it was one of those or somebody that was there.

Q. Did you know before you left Boise who would locate you?

A. No, sir; I heard there was a locator up there.

(Testimony of Sanora A. Joplin.)

Q. You had no engagement before you went up?

A. No, sir.

Q. You saw Mr. Downs personally?

A. Yes, sir, I saw him the morning we went out.

Q. What did you say to him about locating?

A. Asked him if there was any timber to be located in that vicinity that we could go and see and that day get back to Kempner's, and he said most of the claims had been taken up, but that there was a few left that was near.

Q. And he took you out and located you on one of these claims, did he?

A. He took out a party; there was several in the party that day besides ourselves, and we all went out to this timber, and he showed us some claims that was vacant, and he said further on over there—he named the distance, but I don't remember just how far—there was quite a bit of land over there, and if we wanted to go over we could go over and look at the claims over there, if we didn't like those.

Q. You went over one of the claims?

A. I went over one and the one I went over I thought the timber was as fine as anywhere in the country, and so I took that one.

Q. Did Mr. Downs tell you how much you were to pay him for his trouble? A. No, sir.

Q. Did you pay him anything?

A. I didn't, not there.

Q. Where did you pay him?

A. I think at Mr. Pritchard's office.

Q. When did you pay him?

(Testimony of Sanora A. Joplin.)

A. When we came down from the mountains after he located us there.

Q. Was it the next day?

A. I don't remember whether it was the next day or a few days afterwards.

Q. How much did you pay him?

A. I think, as well as I remember, we paid \$25 where we got our filing papers.

Q. How did you happen to go to Mr. Pritchard's office?

A. Well, when he gave us the numbers of the land after locating us—after showing us the land he gave us the numbers of the land, and I asked him what we should do with that, and he said "Take it down to Boise and get the papers made out," and I said "Where do we go"? and he said "Go to Mr. Wells' office and he will fix them for you," and when we went to the office Mr. Wells said he was busy and he thought perhaps we could get them fixed at Mr. Pritchard's.

Q. Did Mr. Wells take you there?

A. No, sir.

Q. And who was with you then?

A. My son and I.

Q. Which one of these two sons?

A. Andrew. Walter didn't go with us.

Q. This Mr. Wells' office that you went to is Mr. John I. Wells, the gentleman now present?

A. I suppose it was; I didn't know the gentleman. They told me it was Mr. Wells' office. I couldn't remember whether it was Mr. Wells or not. It is the

(Testimony of Sanora A. Joplin.)

gentleman I met here. I suppose it is the same. I didn't know the gentleman at the time we went in the office; in fact I didn't look at him very much. He told us he was busy and couldn't fix the papers, so we went to Pritchard's office.

Q. When you went to Pritchard's office did you give him the description of the land?

A. We handed him the papers, the section and township, I think.

Q. And he prepared the sworn statement for you?

A. I couldn't say whether he did or not.

Q. He prepared all the papers that you filed in the land office that day?

A. I think so, yes. I couldn't be positive, but I suppose he did.

Q. When you got to Mr. Pritchard's office was Mr. Downs there? A. No, sir.

Q. Was that the occasion I understood you to say that you paid Mr. Downs, in Mr. Pritchard's office?

A. I didn't know it was for Mr. Downs at all. I asked him what the expenses was there, and he says, "You pay all expenses to get your papers fixed." He didn't tell me what the expenses would be, or anything of the kind, and when we got the papers we asked what the fees was, and he told us \$25, as well as I remember I think it was \$25.

Q. Did Mr. Pritchard prepare the deed for you when you sold this property? A. No, sir.

Q. Who prepared that for you?

(Testimony of Sanora A. Joplin.)

A. I think it was Mr. Kinkaid, as well as I remember.

Q. How did you get to Mr. Kinkaid's office?

A. I understood Mr. Kinkaid was buying claims.

Q. Who told you that?

A. I couldn't say that. It was generally discussed among the people, but I understood that he was buying claims, and I went to see Mr. Kinkaid.

Q. And then you took the papers that Mr. Pritchard gave you to the land office and filed them?

A. Yes, sir.

Q. And after several months you went back to make your final proof?

A. Went back I think in the March following. We were notified from the land office.

Q. Had you met Mr. Wells between the time you made your original filing and the time you made your proof?

A. No, sir, I had not.

Q. You say that you have seen him since or talked with him since?

A. I have; I think it has been a couple or three years since. That happened before I met Mr. Wells.

Q. What was the occasion that you met the gentleman at that time?

A. I couldn't say I met the gentleman, was introduced to him. I think he came into my house, as well as I remember, and one of my sons told me it was Mr. Wells, I think.

Q. Did he come to see you about this land?

A. No, sir.

Q. Did he get you to make a statement the day

(Testimony of Sanora A. Joplin.)

he came to see you? A. No, sir.

Q. Did he talk about this case when he was there?

A. I don't remember his talking about it.

Q. Did he talk to you about one of the criminal cases *that there* indictments pending in?

A. I don't think he did. If there was any such conversation I don't remember.

Q. Do you remember when you went to the land office and paid in a certain amount of money, the second time, when you made final proof?

A. Yes, sir.

Q. How much did you pay?

A. I think it was \$400.

Q. Did you pay this money in cash or by check?

A. We paid cash.

Q. Did you get this money out of the bank, or where did you have it?

A. I did not. It was my own money.

Q. Where did you get it from?

A. Well, that would be a very hard matter to state, I guess, where I got every dollar.

Q. As near as you can remember.

A. My husband had died a couple of years before, and had left me some money, and I was keeping boarders, and I had a farm over here, and I had houses rented, and I also had a grain store and grocery business when he died, and, all together, I managed to save up a little money from the proceeds all together. That is as near as I can give account for the money.

Q. And you kept your money right on the prem-

(Testimony of Sanora A. Joplin.)

ises? You didn't keep any of it in the bank?

A. No, sir, I would rather keep it in a tin can; I don't like to risk money in the bank.

Q. And when you went to Mr. Pritchard's office or Mr. Kinkaid's office to sell this, did he make you an offer for it? A. He did not.

Q. What did you say to him?

A. I asked him if he was buying claims, and he said he was.

Q. How long was that before you made your deed?

A. I think it was the same day. I think I sold him the claim before I left the office.

Q. Were you alone when you went there that time?

A. No, my son Frederick was there—we call him Frederick sometimes and sometimes Andrew—that was my older son; Walter didn't go with me.

Q. And he prepared the deed that you signed?

A. I think he had the deed in blank form and filled it out when I went there; that is as I remember.

Q. Did you know Mr. Horace S. Rand?

A. No, sir.

Q. Had you ever heard of him?

A. Never that I know of.

Q. How much did you receive for this claim?

A. Well, I couldn't say positively whether it was \$800 or \$850 that we got. He said claims had been selling for \$850 when I asked him, but that they had dropped in price, and I don't remember whether I got \$800 or \$850.

(Testimony of Sanora A. Joplin.)

Q. Was it \$950?

A. No, I don't think so. It might possibly have been, but I don't think so. As well as I remember, it was \$800 or \$850.

Q. Did he give you a check for it or give you cash?

A. He paid us cash.

Q. And your son sold at the same time?

A. Yes.

Q. Was Mr. Pritchard there at that time?

A. No, sir, I don't think there was anyone in the office.

Q. Did you go out to acknowledge this deed before someone?

A. No.

Q. I see the acknowledgment is taken before L. M. Pritchard.

A. He might have possibly been in there; I don't remember. I didn't know Mr. Pritchard and I didn't know Mr. Kinkaid, and I couldn't say positively that it was Mr. Kinkaid; he said his name was Kinkaid. I have never saw the man since, so I couldn't be positive it was Kinkaid; I only had his word for it. Mr. Pritchard might have been there, but I can't remember it.

Mr. GORDON.—We offer in evidence the sworn statement; the final proof of Mrs. Joplin; the cross-examination attached; the register's and receiver's certificates, dated March 19, 1903; and the deed identified by Mrs. Joplin, dated March 25, 1903; certified copy of the patent, dated August 23, 1904; all to the southwest quarter of section 33, township 7 north of

(Testimony of Sanora A. Joplin.)

range 8 east, Boise Meridian.

(Marked Plaintiff's Exhibit No. 75A to 75G inclusive.)

Cross-examination.

(By Mr. BUNDY.)

Q. Mrs. Joplin, you are a widow lady, I think.

A. Yes, sir.

Q. What is your age?

A. Forty-eight, soon will be.

Q. And you have lived in Boise or vicinity since '79?

A. Yes, sir, in here and around Boise; I lived down on the farm twelve or thirteen years.

Q. At the time you went to the land office and made your first filing you had not made any arrangement, directly or indirectly, in writing or verbal, with any person, as to what you should do with the land when you got title to it, had you? A. No, sir.

Q. And that was true at the time you made your final proof, was it not? A. Yes, sir.

Q. Up to the time you made final proof had anybody ever suggested to you what you should do with this land? A. No, sir.

Q. Had you suggested to anyone else what you intended to do with it? A. I had not.

Q. Had you had any talk with anybody about purchasing the land prior to the time you made final proof? A. No, sir.

Q. Had you offered to sell it?

A. Not till the time I made final proof?

Q. Up to the time you made final proof had any-

(Testimony of Sanora A. Joplin.)

body, or any firm, or any corporation, any interest in the land you were about to get, or the timber on that land? A. No, sir.

Q. Mrs. Joplin, the Government, by its attorneys in this case, has filed a complaint here, in which it charges certain things against certain people, and it charges that you entered into a wicked and unlawful conspiracy to defraud the United States out of this land that you entered, and that you entered into a conspiracy with Mr. Barber, Mr. Moon, Mr. Kinkaid and the other defendants for that purpose. Is that true? A. It is false.

Q. And the Government charges you in this complaint, together with all the other good people who exercised their rights for that purpose, of defrauding the United States, and, for the purpose of getting land which you were to turn over to the Barber Lumber Company, you went to the land office and testified falsely in order to get that land. Is that true or false?

A. It is false. If there was anything false about it, we was ignorant of the fact.

Q. The particular thing I want to call your attention to is the charge in that complaint that you entered that land for the benefit of the Barber Lumber Company or some of the other defendants in this action.

A. I did not. I took it for my own use and benefit and not for the benefit of anybody else.

Q. Mrs. Joplin, how many times have you been interviewed by the Government officials relative to

(Testimony of Sanora A. Joplin.)

this claim?

A. I never had a word spoken to me.

Q. Never was before the Grand Jury?

A. No, sir; I was invited to go before the Grand Jury, but I never went.

Q. Have they had any talk with you to-day?

A. No, sir.

Q. This is the first time you have been asked to make a statement?

A. This is the first time I have been asked to make any statement whatever.

(Witness excused.)

[Testimony of Walter Joplin, on Behalf of the Complainant.]

WALTER JOPLIN, produced as a witness on behalf of the complainant, being first duly sworn, testified as follows:

Direct Examination.

(By Mr. GORDON.)

Q. Mr. Joplin, I will ask you what your business is?

A. Ranching, right at the present time.

Q. What is your age?

A. I will be twenty-nine in July.

Q. What was your business in 1902?

A. Clerk in the grocery business.

Q. Who did you clerk for?

A. E. H. Plowhead.

Q. What was your salary at that time?

A. \$60 or \$65 a month. Then I worked prior to

(Testimony of Walter Joplin.)

that for the Shaw Lumber Company, and I was getting \$65 there, if I remember right.

Q. You took up a claim under the Timber and Stone Act in 1902, did you? A. Yes, sir.

Q. I show you timber and stone land sworn statement, and ask you if that is your signature to it.

A. I think it is.

Q. And testimony given on final proof by Walter Joplin, dated May 4, 1903. Is that your signature?

A. Yes, sir.

Q. Is that your signature to cross-examination attached thereto? A. Yes, sir.

Q. Is that your signature to the deed dated May 14, 1903, to Horace S. Rand? A. Yes, sir.

Q. Who first spoke with you about taking up a timber and stone claim?

A. Nobody in particular. There was a rumor around town a little, and I would see the paper, and, of course, I talked it over with my mother first.

Q. Did you know Mr. John I. Wells before that?

A. No, sir.

Q. Mr. Patrick Downs? A. Yes, sir.

Q. How long had you known Mr. Downs?

A. A couple or three years.

Q. Had you talked with him about it?

A. No, sir.

Q. Mr. L. M. Pritchard? A. No, sir.

Q. Mr. John Kinkaid?

A. Oh, I knew him, of course.

Q. I mean personally, to talk with him.

A. No, sir.

(Testimony of Walter Joplin.)

Q. Who arranged for the party that you went with when you went to locate?

A. I arranged it myself as much as any of them.

Q. Who else was in the party?

A. I think George Butler and Ed Bush.

Q. The three of you went together?

A. Yes, sir.

Q. Where and when was the first time that you met John I. Wells?

A. I don't remember.

Q. Where did you go to view this land?

A. Idaho City.

Q. Is that where Kempner's ranch is?

A. Yes.

Q. How far from the ranch did you go to see the land?

A. I should judge four miles, or five.

Q. Did you have any arrangement to meet anybody there that would locate you, before you left Boise?

A. No, sir.

Q. Did you know who was going to locate you?

A. Yes, sir.

Q. Who told you who would locate you?

A. I had heard it from a good many around town.

Q. Did you know what it was going to cost you, locating fee?

A. I had heard that, yes, sir.

Q. Who did locate you?

A. Mr. Patrick Downs.

Q. Where did you meet Mr. Downs?

A. At Mose Kempner's ranch.

Q. Did you agree with him what you should pay him?

A. Yes, sir.

(Testimony of Walter Joplin.)

Q. How much did you agree to pay him?

A. Twenty-five dollars.

Q. Did you pay him that \$25? A. I did.

Q. Where did you pay him—up there or down here?

A. I think I paid Mr. Wells down here; I think that was the first time I had seen Mr. Wells.

Q. Then you were taken over the land up there by Mr. Downs? A. Yes, sir.

Q. And did he show you any particular tract which you were to locate on?

A. No, he showed me over several claims.

Q. How many claims did he show you over?

A. Something like four or five.

Q. Why didn't you take the first one that he showed you?

A. Well, we were going over these claims, and I wanted the best I could get.

Q. When he showed you the first claim did you say that you didn't want that?

A. No, not particular; I told him I would like to see others.

Q. And when you got to the claim that suited you, you told him that it suited *it*? A. Yes, sir.

Q. And the others did the same?

A. Yes, sir.

Q. Did you all locate in a bunch? Were your claims adjoining? A. I don't remember.

Q. Where did you get the description of your land? A. Mr. Downs gave it to me.

Q. Did he write it out for you?

(Testimony of Walter Joplin.)

A. Yes, sir.

Q. Did he give you the description for the other two gentlemen? A. I don't remember.

Q. Did he put it in an envelope for you?

A. I don't believe he did.

Q. Did he give you a letter to Mr. Wells?

A. No, sir.

Q. Did he tell you to go to see Mr. Wells?

A. No, sir.

Q. How did you happen to go to see Mr. Wells?

A. I asked him.

Q. And did he tell you? A. Yes, sir.

Q. What did you ask him?

A. Where I should pay the \$25.

Q. And he told you to go and pay it to Mr. Wells?

A. He told me to pay it to Mr. Wells.

Q. That is the John I. Wells who is now present?

A. Yes, sir.

Q. Where did you see Mr. Wells?

A. I think I went to his office.

Q. Did the other gentlemen that located with you go to the office at the same time? A. No, sir.

Q. You went alone? A. Yes, sir.

Q. Did you give Mr. Wells a description of this property? A. I don't believe I did.

Q. Did you ask him to prepare your papers?

A. No, sir.

Q. Did you say anything to him about preparing papers? A. No, sir.

Q. Who prepared this sworn statement for you that you filed in the land office?

(Testimony of Walter Joplin.)

A. I think it was Mr. Pritchard.

Q. You hadn't met Mr. Pritchard at this time, had you? A. No, sir.

Q. Who was it that told you to go to see Mr. Pritchard? A. I don't remember.

Q. Was it Mr. Wells?

A. No, sir, it wasn't him.

Q. When did you go to see Mr. Pritchard?

A. It was a couple or three days after we returned.

Q. And you went to Mr. Pritchard's office and he prepared this sworn statement for you, and your non-mineral affidavit, that paper—did he prepare that paper for you? A. I think so.

Q. And you took the papers that he prepared for you to the land office? A. Yes, sir.

Q. That is your signature to the non-mineral affidavit that I showed you? A. Yes, sir.

Q. Now, Mr. Patrick Downs, and these two gentlemen that you mentioned, and yourself, left Kemper's ranch to go to view this land, did you?

A. Yes, sir.

Q. Were there any others in the party?

A. No, sir.

Q. Then you never saw Mr. Wells until you returned to Boise? A. No, sir.

Q. I show you the notice of publication, dated January 30, 1903, and ask you where you received that paper, and who prepared that for you?

A. I don't remember.

Q. Did Mr. Wells prepare that paper for you?

(Testimony of Walter Joplin.)

A. I don't think so.

Q. I notice that the witnesses that are named are Edgar E. Bush, George Butler and Patrick Downs. Did you give those names?

A. I don't remember if I did or not.

Q. When you went to the land office who went to the land office with you? A. I went alone.

Q. Did Mr. Kinkaid go along? A. No, sir.

Q. Did you know Mr. King, the register of the land office? A. No, I knew Mr. Garrett.

Q. I notice this first paper that you filed, the sworn statement, says that you were identified to the register of the land office by John Kinkaid, attorney.

Mr. BUNDY.—You don't mean to say that Mr. Joplin says that, do you?

Mr. GORDON.—It is written in the paper in the handwriting of the man whom he said drew the paper.

Mr. BUNDY.—That is your testimony.

Mr. GORDON.—That is apparently the same. I will ask him. Isn't that all in the same handwriting, the body of that and—

Mr. BUNDY.—You had better call Mr. King and ask him who introduced Mr. Joplin.

Mr. GORDON.—I am just asking the witness. You say Kinkaid didn't go to the land office with you? A. I don't believe he did.

Q. Was he there after you got there?

A. I don't remember; he might have been.

Q. Do you remember how much money you paid the first time you went to the land office?

(Testimony of Walter Joplin.)

A. \$12.50, I believe.

Q. And after several months it came time to make your final proof? A. Yes, sir.

Q. Do you remember the occasion of going to the land office then? A. Yes, sir.

Q. And do you remember how much money you paid into the land office?

A. I think it was \$400.

Q. An even \$400?

A. Now, I don't remember. It has been so long ago. I have paid very little attention to it since, and I don't remember.

Q. Did you pay the money in check or in cash?

A. I paid in cash.

Q. And where had you been keeping this money?

A. I had it, worked for it.

Q. How long had you had it?

A. Oh, some of it quite a while.

Q. How long a while?

A. About a year, a little at a time.

Q. Do you remember how much of it you accumulated in the year you made your final proof?

Mr. BUNDY.—I want to object to that on the record as incompetent, irrelevant, and immaterial, for the reason and upon the grounds that the questions asked by the land office were illegal and improper and asked without any authority of law, that the witnesses were under no compulsion to answer them at all unless they wanted to, and that they are wholly irrelevant, incompetent and immaterial here.

Mr. GORDON.—Q. How much of it had you ac-

(Testimony of Walter Joplin.)

cumulated during the last year preceding your making your final proof?

A. I had about six or seven hundred dollars accumulated.

Q. I am trying to find out, you said you had part of it a year before.

A. Oh, something like probably \$175 or \$200.

Q. And you saved the balance of it the last year?

A. Yes, sir.

Q. Did you borrow any of this money from anybody?

A. No, sir.

Q. Didn't get any of it from your mother?

A. No, sir.

Q. I notice from your cross-examination, given at the time you made final proof, and which you have identified as being signed by you, question No. 16, I will ask you whether this question was asked you: "Did you pay, out of your own individual funds, all the expenses in connection with making this filing, and do you expect to pay for the land with your own money?" Answer: "Yes, sir." I will ask you if that question was asked you and whether you made that answer.

Mr. BUNDY.—I object to that as incompetent, irrelevant and immaterial, and asked for the sole purpose of impeaching your own witness.

A. I believe it was.

Mr. GORDON.—Q. I will ask you if this question was asked you, No. 17: "Where did you get the money with which to pay for this land, and how long have you had same in your actual possession?" An-

(Testimony of Walter Joplin.)

swer: "Worked for it, saving for three or four years, and borrowed part from my mother, Mrs. S. A. Joplin. Some had for year." Did you make that answer?

A. Yes, sir, but I had loaned her the money and she gave it back to me.

Q. Now, how long after you made this final proof did you have any negotiations for the sale of this property?

A. Oh, I should judge three or four weeks.

Q. And with whom did you negotiate?

A. I think Mr. Kinkaid.

Q. Did he come to see you or did you go to see him?

A. I went to see him.

Q. And did he make you an offer for the land?

A. I think he did.

Q. How much did he offer you?

A. I think he offered me \$800.

Q. And did you eventually sell it to him for that amount?

A. No, sir.

Q. How much did you get?

A. \$850.

Q. How many times did you go to see him about it?

A. I think twice.

Q. How far apart were those visits?

A. I think about a week or something like that.

Q. Who did you say that was—Mr. Kinkaid or Mr. Pritchard?

A. Mr. Kinkaid.

Q. And then the second time you went there you closed the deal with him and made this deed?

A. Yes, sir.

Q. Did he have the deed already prepared when

(Testimony of Walter Joplin.)

you reached the office? A. No, sir.

Q. Did you know Horace S. Rand?

A. No, sir.

Q. Had you ever heard of him?

A. No, sir.

Q. Did you read the deed that you signed?

A. I don't remember.

Q. Did Mr. Kinkaid pay you the money in cash or by check? A. In money,—cash.

Q. \$850? A. Yes, sir.

Q. And did you notice that the deed you signed said that the consideration was \$1100?

A. No, sir.

Q. Now, I note that the deed is acknowledged before L. M. Pritchard. Did you go out to see Mr. Pritchard with this deed, or was he in the office at the time?

A. I don't remember, I couldn't say.

Q. You never made any other filing under the Timber and Stone Act but this one, did you?

A. No, sir.

Q. Were you ever asked to make any other deed besides this one? A. No, sir.

Mr. GORDON.—We offer in evidence the timber and stone land sworn statement of Walter Joplin, which he identified; his testimony before the land office on final proof, and the cross-examination attached; the testimony of the other witnesses on final proof; and Mr. Joplin's non-mineral affidavit; the register's and receiver's certificates, dated May 4, 1903; certified copy of patent, dated July 26, 1904;

(Testimony of Walter Joplin.)

and the deed, dated May 14, 1903, identified by Walter Joplin, running from Walter Joplin to Horace S. Rand, consideration \$1100; all to the west half of the northeast quarter, and the southeast quarter of the northeast quarter, and the northeast quarter of the southeast quarter of section 20, township 7 north of range 8 east, Boise Meridian.

(Marked Plaintiff's Exhibit No. 76A to 76Q, inclusive.)

Cross-examination.

(By Mr. BUNDY.)

Q. Mr. Joplin, at the time you filed your first papers in the land office, was there in existence any agreement, express or implied, written or verbal, between you and any person, firm, or corporation, by which you had promised or agreed to transfer to any person the title you might acquire from the Government of the United States? A. No, sir.

Q. Was there any such agreement at the time you made your final proof? A. No, sir.

Q. Up to the time you made final proof had any person offered to buy your land from you?

A. No, sir.

Q. Had you offered to sell it to any person?

A. No, sir.

Q. At the time you entered it did you know who you would sell it to? A. No, sir.

Q. You are charged in the bill of complaint here, Mr. Joplin, with having entered into a conspiracy with the defendants in this action for the purpose of defrauding the United States out of the land you

(Testimony of Walter Joplin.)

entered. Is that true or false?

A. It is false.

Q. And it is further charged in this complaint that you entered this land, and were induced to enter it, by the Barber Lumber Company, and for their benefit. Is that true or false?

A. That is false.

Q. And it is charged that you and your mother, and all the others here, deliberately went to the land office and perjured themselves, to enable them to get the land to turn over to the Barber Lumber Company. Is that true or false?

A. That is false.

Q. Had you any connection with any of the defendants in this action of any kind at the time you filed on this land, made final proof on it, or sold it?

A. No, sir.

Q. Were you induced by any person to enter this land, other than your own inclination?

A. No, sir.

Q. You understood that Pat Downs and John I. Wells were partners in the locating business?

A. Yes, sir.

Q. And Downs located you and sent you to his partner to settle?

A. Yes, sir.

Q. Have you been interviewed at any time in the past by any of the Government officials relative to this matter, Mr. Joplin?

A. No, I haven't.

Q. Have you to-day?

A. No, sir.

(Testimony of Walter Joplin.)

Redirect Examination.

(By Mr. GORDON.)

Q. Have you talked to Mr. Wells about this case?

A. No, sir.

Q. Has he talked to you? A. No, sir.

Q. Has anybody ever talked to you about it?

A. No, sir.

Q. Haven't you talked it over with your mother?

A. No, sir.

Q. And your brothers? A. No, sir.

Q. Never spoken about it at all?

A. Oh, speak about it, being up here is all, but nothing in connection with it.

(Witness excused.)

[Testimony of Frank P. Weasel, on Behalf of the Complainant.]

FRANK P. WEASEL, produced as a witness on behalf of the complainant, being first duly sworn, testified as follows:

Direct Examination.

(By Mr. GORDON.)

Q. Your name is Frank Weasel?

A. Yes, sir.

Q. What is your occupation, Mr. Weasel?

A. I am a teamster.

Q. Were you in the same occupation in 1903?

A. I was on the ice wagon then.

Q. How long have you resided in Boise?

A. I think since 1900 or 1901; I ain't positive about which it is.

(Testimony of Frank P. Weasel.)

Q. Who was the first one that spoke with you about taking up a claim under the Timber and Stone Land Act?

A. I couldn't tell you that. It was general talk.

Q. Did you know Mr. John I. Wells at that time?

A. No, sir.

Q. Did you know Mr. Patrick Downs?

A. No, sir, I don't know none of them.

Q. Mr. L. M. Pritchard? A. No, sir.

Q. Mr. John Kinkaid?

A. No, sir, I didn't know none of them.

Q. And you went to look at this land before you entered it? A. Yes, sir, I went over it.

Q. Did you go alone or did you leave here with some party?

A. I think there was four or five of us, but two of us only filed, I think, went after the claims.

Q. Who were of that party?

A. Mr. George Butler, and a feller named George York, I think, went along, and Mr. Fred Bush.

Q. Who arranged for the team?

A. Why, we went up, I think, on the stage.

Q. Where did you go? A. To Idaho City.

Q. And how far is Idaho City from Kempner's ranch? A. Well, I couldn't tell you that.

Q. Did you go to Kempner's ranch?

A. Yes, sir, we stayed all night there.

Q. How did you get from Idaho City to Kempner's ranch.

A. We hired a team as far as the summit, and then went afoot from there.

(Testimony of Frank P. Weasel.)

Q. How far did you walk?

A. I couldn't tell you that.

Q. Ten miles?

A. I couldn't say how far it is from the summit to the ranch.

Q. Did you know before you left who was going to locate you? A. No, sir, wasn't positive.

Q. Did you know who was locating people up there? A. No, sir, I didn't.

Q. Didn't know that Mr. Downs was locating people up there?

A. No, sir, a feller said Pat would locate us, and that was all the name I knew; they called him Pat.

Q. Did you afterwards learn that it was Pat Downs?

A. I have learned since that it was Pat Downs. They just called him Pat; that was all I could say.

Q. Were you a married man at that time?

A. Yes, sir.

Q. Have a family?

A. Yes, sir, four children.

Q. What was your salary driving the ice wagon?

A. In 1903 I think it was \$100 or \$110 a month—I don't know which.

Q. Did you have any agreement with Mr. Downs as to what he would charge you for locating you after you saw him?

A. No, sir, I think he said it would cost me \$25 providing I filed, if I took the claim.

Q. It wouldn't cost you anything if you didn't file?

(Testimony of Frank P. Weasel.)

A. No, sir, I never paid him a cent. I give the money to Mr. Butler to pay him. I was on the ice wagon, and I give Mr. Butler the money to pay him.

Q. I show you timber and stone land sworn statement, dated April 22, 1903, and ask you if you signed that paper.

A. Yes, sir, I signed that; that is my signature.

Q. Did you file it in the land office after you signed it? A. I guess I did.

Q. Do you know who prepared that paper for you?

A. I don't know; it was an attorney on Main street.

Q. Was it Mr. Kinkaid?

A. I couldn't say who it was.

Q. Did Mr. Downs, after he located you, give you a description of the property?

A. No, I don't think so.

Q. When you went to this lawyer's office did you have a description of the property?

A. I had it.

Q. And you took it to his office?

A. Yes, sir.

Q. Did you go alone?

A. No, I think it was me and the other feller that took the claim, York.

Q. How long was that after you returned from Kempner's ranch? A. I couldn't say.

Q. Was it the same day?

A. No, sir, it wasn't the same day; I couldn't say whether it was the next day or the day after.

(Testimony of Frank P. Weasel.)

Q. It was in a day or two? A. Yes, sir.

Q. Had you ever met this lawyer before?

A. No, sir.

Q. Did you pay him anything for preparing that paper for you? A. I think we did.

Q. How much did you pay him?

A. I think it was a dollar or somewheres along there.

Q. Do you know how you came to go to his office?

A. I don't remember who directed me there.

Q. I show you notice of publication, dated April 22, 1903. Did the same man prepare that paper for you?

A. I guess he did. My name is to it. I can't say very well.

Q. Your name is signed to that.

A. I couldn't say whether he did or not.

Q. Non-mineral affidavit, dated same day—is that your signature to that? A. Yes, sir.

Q. Did the same gentleman that prepared your sworn statement prepare that?

A. I guess he did.

Q. I show you deed, dated 31st of July, 1903, signed Frank P. Weasel and Nora F. Weasel, to Horace S. Rand. Is that your signature to that deed?

A. Yes, sir.

Q. And is that the signature of your wife?

A. Yes, sir.

Q. Can't you remember who told you to go to this man's office, or did you just straggle in there?

A. No, I don't know who told me to go there.

(Testimony of Frank P. Weasel.)

Q. You haven't an idea? A. No, sir.

Q. Had you met Mr. Wells at that time?

A. No, sir, I don't know Mr. Wells.

Q. Do you know Mr. Wells now?

A. No, sir, not that I know of.

Q. Never spoke to him? A. I don't know.

Q. Ever see that man? That is John I. Wells (pointing).

A. I saw him since I have been in court.

Q. Ever speak to him?

A. No, sir, I think I haven't spoke to him.

Q. Then the time came for you to make your final proof. Do you remember that occasion, going to the land office to make your final proof?

A. Yes, sir.

Q. You paid some money at the land office that time, did you? A. Yes, sir.

Q. And do you remember whether you paid by check or cash? A. I paid in cash.

Q. Do you remember how much it was?

A. No, I don't remember just what it was—whatever the amount was.

Q. Have you an idea how much it was?

A. It was over four hundred dollars.

Q. And when did you draw the money out of the bank with which to pay it?

A. The same day I proved up.

Q. When had you put that money in the bank?

A. I guess I put it in when I first came to this country, in 1900 or 1901.

Q. Do you know how much you put in when you

(Testimony of Frank P. Weasel.)

first came here?

A. I don't know, just remember,—it was something over a thousand dollars.

Q. And you have had that in there all that time?

A. The biggest part of the time.

Q. In what bank was it?

A. Capital State Bank.

Q. What month in 1901 did you come here?

A. It was in September, I think, as near as I can remember.

Q. How long after you paid this money in the land office did you sell the property?

A. Well, sir, it was a short time afterwards, but I can't tell you just what day.

Q. Do you know to whom you sold it?

A. No, sir, I do not.

Q. Do you know in whose office you sold this property?

A. Well, sir, it was between Ninth and Tenth streets, on the south side of the street.

Q. How did you happen to go to this office to sell it?

A. Well, sir, I don't remember.

Q. Did you tell the man there that you wanted to sell it?

A. Yes, sir, I wanted to sell it. My family had poor health and I sold it and went to the coast.

Q. How much did you get for the land?

A. \$800 or \$850—I couldn't say exactly which it was.

Q. Was that paid you in cash?

A. Yes, sir, I think so.

(Testimony of Frank P. Weasel.)

Q. Did you know Mr. Horace S. Rand?

A. No.

Q. Did you read the deed over that you signed?

A. I don't remember whether I did or not.

Q. How many times had you seen this man to whom you sold?

A. I don't remember that I saw him before, or not.

Q. Was the man that you sold to the same man that drew your first papers for you?

A. I don't think so; I don't remember; I couldn't say.

Q. Did I ask you how many times you had been to his office or seen him with reference to selling this property?

A. Well, sir, I think I only went there the morning I sold it.

Q. You only went there on the one occasion?

A. Yes, sir.

Q. Did you take your wife with you that morning?

A. I think she was there on Main street, and I think I went out and called her.

Q. Did you ever make any other deed to this property? A. No, sir.

Q. Did you deposit this money that this gentleman gave you in the Capital State Bank?

A. Yes, sir.

Q. The same day you got it? A. Yes, sir.

Q. And did your wife take up a claim?

A. No, sir.

(Testimony of Frank P. Weasel.)

Q. This was the only claim that you ever took up under the Timber and Stone Act?

A. Yes, sir.

Q. Did the gentleman that you sold this property to have this deed that you signed there already made out when you went there?

A. He was making something—he made it out, I guess, when I was there—I couldn't say.

Q. You don't know whether this man that made this deed out and to whom you sold this property was the same man that made your other papers out?

A. No, sir, I couldn't tell you that.

Q. How much money did he give you in cash that day?

A. It was \$800 or \$850.

Q. Do you remember of going before a notary public and acknowledging this deed?

A. No, I don't remember.

Q. How many people were in the office besides yourself and wife when you signed this deed?

A. I couldn't say, one or two, I couldn't say which.

Q. You say you don't know that you ever saw Mr. Kinkaid or Mr. Pritchard?

A. No, sir, I might have seen them, but I don't remember.

Mr. GORDON.—We offer in evidence the following papers, identified by Mr. Weasel: The sworn statement; the non-mineral affidavit; the deed; the final proof, and the cross-examination thereto; also the notice of publication; the testimony of the other witnesses on final proof; the register's and receiver's

(Testimony of Frank P. Weasel.)

certificates, dated July 13, 1903; and certified copy of patent, dated July 26, 1904; all to the southeast quarter of section 31, township 7 north of range 8 east, Boise Meridian.

(Marked Plaintiff's Exhibit No. 77A to 77N, inclusive.)

Q. This \$105 that you received for driving the ice wagon per month, you had to furnish your own team, didn't you?

A. Yes, sir, it was either \$105 or \$110 per month.

Q. And you got that for your own services and that of one or two horses and a wagon?

A. Two horses and a wagon, yes, sir.

Cross-examination.

(By Mr. BUNDY.)

Q. Mr. Weasel, as I understand it, you paid your own way up on the stage? A. Yes, sir.

Q. Paid your own team that you hired up there?

A. Yes, sir.

Q. And back to the land office, and paid the filing fees at the land office? A. Yes, sir.

Q. Paid your publication fees for publishing notice in the paper? A. Yes, sir.

Q. And paid for the land to the Government when it came time for final proof?

A. Yes, sir.

Q. All those payments were made by yourself and for yourself? A. Yes, sir.

Q. And with money derived from your own labor, and no one else had any interest in it?

A. No interest whatever.

(Testimony of Frank P. Weasel.)

Q. The Government of the United States has charged you, Mr. Weasel, with having entered into an agreement with the defendants in this action, whereby you agreed to enter some lands for them, to go to the land office and swear falsely, so that you could get title, and when you got title turn it over to the Barber Lumber Company or such person as they should direct. Is that true or false?

A. It is false.

Q. Up to the time you made final proof had anyone ever had any talk with you about buying your land, or had you ever had any talk with anybody about selling it?

A. No, sir.

(Witness excused.)

[Testimony of Ery A. Wilmot, on Behalf of the Complainant.]

ERY A. WILMOT, produced as a witness on behalf of the complainant, being first duly sworn, testified as follows:

Direct Examination.

(By Mr. GORDON.)

Q. Where do you reside, Mr. Wilmot?

A. I reside at Sunnyside, Idaho.

Q. How long have you resided there?

A. Since the 18th of May a year ago last.

Q. Where did you reside in 1902?

A. In Boise.

Q. How long had you resided here then?

A. About twenty years ago last fall since I first came here.

(Testimony of Ery A. Wilmot.)

Q. What was your occupation in 1902?

A. I was a contractor and builder.

Q. You took up a claim under the Timber and Stone Act in 1902, did you? A. Yes, sir.

Q. You never took up but the one claim?

A. That was all.

Q. And did you know Mr. John I. Wells at the time you took the claim up?

A. Yes, sir, I believe I knew him some time before.

Q. Do you know who first spoke with you about taking up a timber claim?

A. Well, I think Mr. West did, but there was a good deal of talk; I heard some other talk besides.

Q. Mr. Dean West?

A. I believe that is his name.

Q. What did Mr. West say to you about it?

Mr. BUNDY.—I object to that as incompetent, irrelevant and immaterial, and asking for hearsay evidence from a person not a party to this action.

Q. What did Mr. West say to you about it?

A. I don't remember just the conversation.

Q. Well, did he tell you that you could take up a claim and that there would be a certain amount in it for you?

Mr. BUNDY.—I object to that as leading, and ask that the witness be asked to testify to the conversation.

A. He told me there was several parties taking up timber up there, and that there was more to be taken; what he said about the price I don't remem-

(Testimony of Ery A. Wilmot.)

ber.

Q. Do you remember whether or not he told you that there was \$250 in it for you?

A. My father had taken a piece, and he told me some of the circumstances in regard to it.

Q. What did he tell you?

Mr. BUNDY.—That is objected to for the same reason, and hearsay.

A. He told me that if we took up land there that there might be a possibility of making about a thousand dollars apiece out of it, to take it and stay with it—something to that effect.

Q. I will ask you whether or not Mr. Dean West told you that you could take up this claim and turn it over and make \$250 over and above all it cost you?

A. No, not at that time.

Q. Did he tell you that at any time?

A. Yes, sir.

Q. When did he tell you that?

A. It was after I located.

Q. How long after you located?

A. I don't remember just how long.

Q. Was it the same day? A. No, sir.

Q. Did he say anything about where you could get the money to make final proof with?

A. No, sir.

Q. Did anybody tell you where you could get the money to make final proof?

A. Not at that time.

Q. Well, at any time?

A. Yes, I believe I was told, but I don't remem-

(Testimony of Ery A. Wilmot.)

ber who by.

Q. Did you use your own money with which to make final proof? A. No, sir, I did not.

Q. Where did you get the money from?

A. I believe Mr. Wells gave it to me.

Q. Do you mean Mr. John I. Wells, the gentleman present here? A. Yes, sir.

Q. Did Mr. Wells tell you himself that he could let you have the money with which to make your proof? A. I think he did.

Q. Where did he tell you that?

A. On the street.

Q. Did he make the suggestion himself? Did he come up to you and tell you that he would lend you this money?

A. No, I don't think that he suggested it himself.

Q. You suggested it to him?

A. Well, I think I made the suggestion myself.

Q. What was the suggestion?

A. I asked him if he knew where I could get money to make the final proof; told him that I was using my own money contracting; and he said he believed he did, he said he could get it for me.

Q. Did he give it to you there?

A. No, sir.

Q. When did he give it to you?

A. About a week afterwards.

Q. Was that the same day that you made final proof? A. No, sir.

Q. How long before you made final proof?

(Testimony of Ery A. Wilmot.)

A. Some three or four days.

Q. Did you give him a note for it?

A. No, sir, I did not.

Q. Did you pay him any interest for it?

A. I believe not.

Q. To whom did you sell this property?

A. I don't know their names—some party that resided in Spokane. In my first evidence, I stated there that I didn't see the name on the paper, but I did. I wish to correct that first statement. I don't remember the name, I can't remember.

Mr. KEIGWIN.—Q. You think now that you did see the name on the paper?

A. Yes, sir.

Mr. GORDON.—Q. It was to A. E. Palmer, was it?

A. Well, sir, I couldn't say.

Q. Well, with whom did you negotiate for the sale of this land?

A. Why, I believe, to the best of my recollection, it was with Mr. Pritchard.

Q. How long had you known Mr. Pritchard?

A. Probably a year or such a matter.

Q. Had you ever had any business with him?

A. Yes, sir.

Q. What was the business that you had with him?

A. Making out papers, signing papers before him.

Q. Acknowledging deeds before him, do you mean?

A. Yes, sir.

Q. That was Mr. L. M. Pritchard, was it?

A. Yes, sir.

(Testimony of Ery A. Wilmot.)

Q. How long after you paid your money into the land office, the four hundred and some odd dollars, did you talk with Mr. Pritchard about the sale of this land?

A. I don't remember just the dates, or how long it was.

Q. Well, was it a week, or two weeks, or a month, or how long?

A. Something, I think, about a month.

Q. And did he pay you there when you signed the deed? A. He did.

Q. And how much did he give you in cash?

A. I think it was \$250.

Q. Mr. Wells wasn't there at that time, was he?

A. No, sir.

Q. There wasn't anything said about Wells' money at that time, was there? A. No, sir.

Q. Was that the only talk you had had with Mr. Pritchard about the sale of this property?

A. It was.

Q. Now, state whether or not that sale was made in compliance with an understanding that you had some time prior to that, that you were to turn this land over to Wells or Kinkaid or whoever Wells told you to. A. No, I don't believe it was.

Q. Didn't you understand when you got that money from Wells that you would turn that property over to him or whoever he told you to?

Mr. BUNDY.—I object to that as incompetent, irrelevant and immaterial, it appearing that the money was gotten from Wells after filing was made.

(Testimony of Ery A. Wilmot.)

A. I understood that I could, yes, sir.

Q. Did you understand that you were under obligation to?

A. No, I didn't understand it that way.

Q. Had you ever borrowed any money from Wells before? A. Yes, sir, small amounts.

Q. How many times?

A. Two or three times.

Q. Did you tell him when you would repay this \$400? A. Yes, sir.

Q. When did you tell him?

A. As soon as I made my proof.

Q. You told him at the time you made your proof. Did you tell him as soon as you made your proof you would return it? A. Yes, sir.

Q. And then as soon as you made your proof did you turn your certificate over and get the money from Pritchard?

A. I believe that is correct.

Q. And then it was after that sometime that you made the deed, was it? A. Yes, sir.

Q. Then you went to the land office and paid in your \$412, and made your proof, and went from there to Pritchard's office and turned the receipts over that they had given you at the land office. Is that what I understand? A. Yes, sir.

Q. How long after that was it that you went to Pritchard's office and made the deed?

A. As I stated once before, I think it was about a month.

Q. Did you ever make but the one deed?

(Testimony of Ery A. Wilmot.)

A. I believe that is all.

Q. Do you remember who prepared your sworn statement, the first paper that you filed in the land office?

A. Yes, sir.

Q. Who prepared that for you?

A. I done it myself.

Q. Do you remember who located you on the land?

A. Yes, sir.

Q. Who? A. Mr. Patrick Downs.

Q. Did you know before you went up to the land that Mr. Patrick Downs would locate you?

A. I knew he was there, yes, sir.

Q. Who told you he was there?

A. One of the men that went with the team.

Q. Who went with the team?

A. I mean one of the parties that went with the team, Mr. Allen.

Q. What is Mr. Allen's name?

A. Homer.

Q. And who else was along?

A. I don't remember.

Q. Were only the two of you together?

A. I think there was either four or five.

Q. And where did you go to see this land?

A. We went, I think it was north of Idaho City.

Q. Did you stop at Kempner's ranch?

A. No, sir.

Q. Where did you meet Mr. Downs?

A. Up at Idaho City.

Q. Did you go away from Idaho City to see this land?

A. Yes, sir.

(Testimony of Ery A. Wilmot.)

Q. How far? A. Some four or five miles.

Q. And did he show you any particular claim, or did he give you your pick of all that you saw?

A. I remember him showing us several pieces; I don't remember as there was any particular claim, or anything of that kind.

Q. Did he take you out and show you a claim and say "This is the one you are to locate on?"

A. No, sir, I don't think so. He showed me one piece, and showed me the corners, and asked me if that would suit me.

Q. And you said it would?

A. I think it did; it looked good to me.

Q. And that is really the only one that he showed you? A. Just the one, yes, sir.

Q. And he gave you a description of that there?

A. He did.

Q. Didn't you pay Mr. Wells or Mr. Downs for locating you? A. I believe I paid Mr. Downs.

Q. Did you pay Mr. Downs or Mr. Wells?

A. I might have left the money here with Mr. Wells when I came back.

Q. What is your recollection? Didn't you leave it with Mr. Wells when you came back?

A. I believe that Mr. Downs stated when we left there that if we found those pieces vacant and could file on them, we could leave the location fee with Mr. Wells.

Q. Then he didn't know whether they had been filed on or not, and you had to go to Mr. Wells' office to find out?

(Testimony of Ery A. Wilmot.)

A. He didn't know whether they would be vacant when we returned.

Q. Did you go to Mr. Wells to see if they were vacant? A. I think we did at that time.

Q. And was it then that you left the money with Mr. Wells? A. I paid my money right there.

Q. Did the other gentleman pay right there?

A. I don't know; I couldn't say as to that.

Q. Did Mr. Wells prepare any papers for you to file in the land office? A. He didn't mine.

Q. Did he for the other gentleman?

A. I couldn't say.

Q. Were you there all the time the other gentleman was there? A. No.

Q. You left the other gentleman there?

A. I think that is correct.

Q. I show you deed, dated June 24, 1903, made by Ery A. Wilmot and Mary E. Wilmot, to A. E. Palmer, consideration \$1000, and ask you if you and your wife signed that deed.

A. Yes, sir.

Q. That is the signature of yourself and wife?

A. Yes, sir.

Q. And you acknowledged it before L. M. Pritchard? A. Yes, sir.

Q. Did your wife go to Mr. Pritchard's office with you? A. She did.

Q. And did Mr. Pritchard have this deed there when you arrived? A. I think so.

Q. Where is your wife now?

A. She is in Sunnyside.

(Testimony of Ery A. Wilmot.)

Q. Do you know whether she has been summoned here or not? A. I think not.

Q. Did she take up a claim? A. No, sir.

Mr. GORDON.—We offer in evidence the deed, dated June 24th, identified by Mr. Wilmot as having been executed by himself and wife; also the certified copy of patent, dated January 28, 1904, and the certificate of recordation.

Mr. BUNDY.—You didn't give the dates of the other papers.

Mr. GORDON.—They were in the files of the Borah trial, and are in the files now, and I have made diligent search and have not been able to find them, and if we find them later we will offer them.

Mr. BUNDY.—I ask that all of the evidence of this witness be struck out relative to any entry of a timber and stone claim, for the reason and upon the grounds that the records of the land office are the best evidence of dates and of proceedings taken in such matter, and state that counsel for the defendant didn't make the objection before, assuming that they would be offered, as has heretofore been done. This man didn't testify in the Borah trial at all, did you?

The WITNESS.—No, sir.

Mr. GORDON.—I understood that was where the papers were, that they were exhibits on file there.

The WITNESS.—I was summoned, but I didn't testify.

(Wilmot papers marked Plaintiff's Exhibit No. 78A to 78E inclusive.)

(Testimony of Ery A. Wilmot.)

Mr. KEIGWIN.—Do I understand you, Mr. Wilmot, to say that before you made your first application for this land you had an agreement or understanding with Mr. Wells that you were to borrow the money from him and transfer the land to him?

A. I didn't have any understanding.

Q. You had that understanding afterwards, did you, after you had made your first application?

A. Yes, sir.

Q. Now, at the time you paid him the \$25, did you have any such agreement with him?

A. Not at that time, no, sir.

Q. Was there an arrangement at that time that when you got ready to prove up he would furnish you the money, and that you were to get something like \$440 or \$460 for it?

A. Not with Mr. Wells, no, sir.

Q. Was there with anybody?

A. Well, no. I heard that I could do that if I wanted to, but I didn't have any idea of doing it at that time.

Q. Do you remember in the month of March, 1907, that you made a statement in response to some questions asked you by the then United States Attorney, Mr. Ruick, in regard to this transaction?

A. I remember giving some evidence, yes, sir.

Mr. BUNDY.—It wasn't evidence, I guess, Mr. Wilmot.

A. Well, making some statement.

Mr. BUNDY.—You weren't in court, were you?

A. No, I was not in court.

(Testimony of Ery A. Wilmot.)

Mr. KEIGWIN.—Q. Do you remember on that occasion, after you had given an account of going up to the land—I will show you this paper, which purports to be a statement made by you in March, 1907, and ask you if you have seen that paper before?

A. I may not have seen this one, but I saw one like it.

Q. Did you read that paper over to-day?

A. Yes, sir, I did.

Q. Is that paper correct?

A. Not all, I would think.

Q. In what particulars is it incorrect?

Mr. BUNDY.—I object to that as incompetent, irrelevant, and immaterial, handing to a witness a typewritten statement and asking whether or not it is correct, and I request that counsel call the attention of the witness to any particular part of it which they desire to interrogate him about.

Mr. KEIGWIN.—I want the witness to point out wherein this statement is incorrect.

Mr. BUNDY.—It now appears that the statement which counsel has, and which is lying on the table, consists of a number of typewritten pages apparently, which has not been identified or offered in evidence, and I object to his asking the witness such wholesale questions as to state wherein it is incorrect.

Mr. KEIGWIN.—Q. Mr. Wilmot, do you desire to point out any particulars in which this statement is incorrect?

Mr. BUNDY.—You have a perfect right to take all the time you want, Mr. Wilmot, to look that state-

(Testimony of Ery A. Wilmot.)

ment over. If it is not right you are not bound by it.

Mr. KEIGWIN.—Counsel for the complainant would like to inquire whether, in the conception of Mr. Bundy, this is a witness for the Government or their witness.

Mr. BUNDY.—It is a witness for the Government.

Mr. KEIGWIN.—Counsel for the Government object to Mr. Bundy giving the witness any advice in the matter.

Mr. BUNDY.—Well, if you knew anything about your profession you would know that it is the duty of counsel to tell any witness his privileges and rights, and I shall do it as long as this examination goes on.

Mr. KEIGWIN.—Counsel for the complainant very cheerfully take the advice of counsel for defendants as to their knowledge of their profession, and are perfectly willing to be instructed by him.

Mr. KEIGWIN.—Q. Now, Mr. Wilmot, didn't you read that statement over this morning?

A. I did.

Q. Didn't you say that it was substantially correct?

A. I said it was, outside of several particulars. Here is one right here. The question is asked, "He told you there was a chance to make some easy money?" The question was "Yes, sir." I would like to add to that that I was looking for an investment; that was my business.

(Testimony of Ery A. Wilmot.)

Q. That is what you said to the district attorney?

A. I don't think they put in the full answer that I gave.

Q. Now, Mr. Wilmot, I can show you the point I have in mind, and I think it is the only thing in which there is any doubt. On the third page of this statement, the second question, will you read that and see if there is anything there that you wish to correct?

A. The third question from the top?

Q. Yes. You have an answer there that that was after we returned.

A. I answered that in my statement a few moments ago.

Q. Mr. Wilmot, I will ask you this question. Do you remember that this question was asked you on that occasion, and this answer given, which I now read?

Mr. BUNDY.—Asked by whom, when, and where? I object to it unless those conditions are complied with.

Mr. KEIGWIN.—Mr. Wilmot, this is the question: "Just what was the agreement with Wells after your return?" Answer: "Well, I understood it was, when we got ready, he was to furnish the money to prove up, and we was to turn the claim over to him, but I didn't intend to at the time. My first intention was to take it and hold on to it, but I got crippled a little in money matters, and I took it." Do you remember that this question was asked you and this answer given on the occasion of your interview with Mr. Ruick?

A. Yes, sir.

(Testimony of Ery A. Wilmot.)

Q. Is that answer correct?

A. It is correct.

Q. Do you remember that this question was asked you and this answer given, which I now proceed to read: "Q. What were you to get for it? A. I forget just the figures; I think it was something like \$440 or \$460."

Mr. BUNDY.—Counsel for the defendant further objects to this method of examining a witness by a written statement not in evidence, made at some place not indicated, at some time not specified, and further objects to calling the witness' attention to isolated questions, without the questions going before to explain what is meant.

A. I can't remember; that has been quite a while ago. Some things there are plain and I can remember, but some of them I can't.

Q. What is the fact? Was there any such arrangement or not, as indicated by this question and answer?

A. I believe I made that statement here once before.

Q. You don't know, then, whether you made this statement to the district attorney, in March, 1907, or not? A. I don't remember it, no, sir.

Q. If you did make it was it true or not?

Mr. BUNDY.—I object to that as incompetent, irrelevant and immaterial, asking him a hypothetical question, whether it is true or not, if he doesn't remember making it.

A. It is a hard matter to remember those circum-

(Testimony of Ery A. Wilmot.)

stances, very hard.

Q. I will ask you then if, on the occasion of this interview with the district attorney, in March, 1907, this question was asked and this answer given, which I proceed to read: "Q. And you had that understanding with him at the time you gave him the \$25?

A. I didn't, but the other boys did, because they told me so afterward. I had the understanding with him afterward." Q. Before you got the money?

A. Yes, sir." Do you remember that?

A. I believe I do, yes, sir.

Q. That was true at the time you gave it?

A. I think it was.

Q. And it is true yet, I suppose?

A. To the best of my knowledge.

Mr. BUNDY.—I ask that that portion of the witness' evidence as to what the other boys told him be struck out, as incompetent, irrelevant and hearsay.

Q. Who did you mean by the other boys in that answer?

A. I meant the other boys that were with me when I located.

Q. Have you mentioned them in your testimony here to-day?

A. One of them—Mr. Allen.

Q. Who else was with you?

A. I don't remember their names.

Q. How many were in the party?

A. Either four or five.

Q. Did you take contiguous or adjoining claims?

(Testimony of Ery A. Wilmot.)

A. I believe they were, yes.

Q. Was Sam Marcum one of the party?

A. I couldn't say; they were strangers to me entirely.

Q. Was Joe Cox one of them?

A. No, sir.

Q. Then you do not remember the name of anybody who went with you except this Mr. Allen?

A. Allen.

Q. But these other men who went with you told you that they had the understanding that they were to get the money from Mr. Wells?

A. I got that through Mr. Allen. Mr. Allen was a friend of mine at that time.

Mr. BUNDY.—I object to what he got from Mr. Allen, as incompetent, irrelevant and immaterial and hearsay, and ask that it be struck out, coming in before objection could be made.

Q. Did any of the other men say anything to you about that? A. No, sir.

Q. Well, then, as I understand, it was Mr. Allen who told you what the understanding of these other men was?

A. Yes, sir, he was the one that told me.

Mr. BUNDY.—I ask that that be struck out, it appearing that Mr. Allen is telling something about the understanding of some four persons, and doubly hearsay.

Q. Mr. Allen is Mr. Homer Allen?

A. Yes, sir.

Q. Where does he live?

(Testimony of Ery A. Wilmot.)

A. I couldn't tell you that now.

Q. How long has it been since you have seen him?

A. Why, about six years, I think; something like about six years.

Q. Do you know whether he lives in this town?

A. I heard he was in Minneapolis, Minnesota, once; I heard he was there.

Q. Do you know whether he is a resident of Idaho? A. I don't believe he is.

Q. You don't know where he is?

A. No, sir, I don't.

Q. Do you remember who directed you to go to Mr. Pritchard's office?

A. I don't remember now.

Q. Had you ever been to Mr. Pritchard's office before you went there to sign this deed?

A. Yes, sir.

Q. Do you remember, in this examination taken by the district attorney, March 18, 1907, that this question was asked you and this answer given, these questions were asked you and these answers given, referring to your receipt: "Q. You turned the receipt over to Pritchard? A. Yes, sir. Q. Who directed you to go there? A. Mr. Wells. Q. Had you been there before you went to the land office? A. No, sir." Do you remember these questions and answers?

A. I remember some of them, yes, sir.

Q. Are they correct?

A. I had been there to Mr. Pritchard's office be-

(Testimony of Ery A. Wilmot.)

fore. I answered quickly and not correctly.

Q. How about Mr. Wells directing you to go there? Is that true or not?

A. Well, sir, I can't state. I don't remember whether I was correct in that answer or not.

Q. Do you remember now, independently, whether or not you went to Mr. Pritchard's office under the direct advice or suggestion of Mr. Wells, or for some other reason?

A. I went there, I know, with the intention of signing these papers.

Q. How did you know that those papers were there?

A. Somebody telephoned me at my home, told me that they were there to be signed.

Q. Who telephoned you?

A. I don't remember.

Q. Do you remember that, on the 19th of March, 1907, you had an interview with the then United States Attorney, Mr. Ruick, in the presence of B. W. Oppenheim, being the day after the interview concerning which you have just been questioned?

A. I remember of having just one interview of any kind only; that is all I remember of.

Q. You don't remember going back the next day?

A. No, sir, I do not.

Q. Do you remember that on the occasion of the interview which you do remember, that you were asked concerning the deed, which has been put in evidence, and concerning the circumstances under which it was signed by you, that these questions were

(Testimony of Ery A. Wilmot.)

put to you and these answers given by you, which I now read: "Q. Did you read any other portion of the deed? A. I did not. Q. Do you know whether the blanks in the remaining portion of the deed were filled out at that time? A. No, sir, I do not. Q. Did you see your name in the deed. A. I believe not. Q. Why didn't you see the other portions of the deed? A. Well, he had it folded and said it was all ready for my signature. Q. As I understand you, he had the top of the sheet folded back out of your sight, down to the part where the description had been written in. A. Well, just a little above that. The county and state— Q. On the line where the county and state in which the land is situated are named? A. Yes. Q. Who held this deed in this form? A. Mr. Pritchard. Q. Then the description is the only portion of the deed that you were given an opportunity to read. Is that correct? A. Yes." Do you remember those questions and answers, or anything substantially corresponding to those questions and answers?

A. I remember them.

Q. Did you give those answers as I have read them?

A. Yes, sir, I remember answering those.

Q. They are correct?

A. I won't say it is correct entirely, but it is as near as I can remember. There is one question there that doesn't cover the question I answered awhile ago—the question in regard to covering the party's name which the deed was given to—it doesn't cover

(Testimony of Ery A. Wilmot.)

that part of it. I did see the party's name that the deed was given to, as I stated awhile ago in my statement here.

Q. Do you remember, on the same occasion, that these questions were asked you and these answers given, which I now read: "Q. Did you make any effort or make any request for permission to read the other portions of the deed? A. Well, in a very few moments after my wife signed, I requested him to see it. He said no, that it was all proper anyway, that it was a form that they went through, and people could not see too much, or something to that effect. I do not just remember the language used, but this is the understanding that I got of it anyway, that he didn't wish me to see it, and conveyed the idea to me that it was all right. Q. So neither you nor your wife read any portion of the deed except the description? A. That was all." Do you remember those questions and answers?

A. I don't remember making any such statement as that.

Q. Would you say that you did not make it?

A. No, I won't say that I did not make it.

Q. Well, was it true, whether you made it or not?

Mr. BUNDY.—That is objected to as incompetent, irrelevant and immaterial.

A. I don't remember; it is so far back that it is hard to remember.

Q. Well, is that all the answer you can give to that, Mr. Wilmot?

(Testimony of Ery A. Wilmot.)

A. Well, I don't like to state anything that isn't a fact, and, not being able to remember the circumstances, why I can't make any statement.

Q. Mr. Wilmot, at the time you had this interview with the district attorney, it was your intention to tell the truth as nearly as you could remember, was it not? A. It sure was.

Q. And if in fact you did make those statements you now believe that they were true?

Mr. BUNDY.—I object to that as incompetent, irrelevant, and immaterial, and not a proper way of putting in evidence.

A. They probably were.

Q. That is, you believed at that time that they were? A. To the best of my knowledge.

Q. And that was two years ago, when your recollection of these matters was presumably fresher than it is now? A. Yes.

Mr. KEIGWIN.—Counsel for the complainant give to Mr. Bundy the report of the interview with Mr. Wilmot, concerning which he has been questioned in this examination.

Cross-examination.

(By Mr. BUNDY.)

Q. Mr. Wilmot, how many times have you been interviewed by Government officials, relative to your recollection of this timber and stone entry, including this time?

A. I think it is twice; it may possibly be three times.

(Testimony of Ery A. Wilmot.)

Q. And this time, on or about March 18, 1907, which you have been asked about, was it on or about the time the Grand Jury was in session?

A. I believe it was.

Q. Were you before the Grand Jury as a witness?

A. When Mr. Borah was tried?

Q. No, he wasn't tried before the Grand Jury. Were you before the Grand Jury?

A. Yes, sir.

Q. How many times? A. Once.

Q. Was that at or about the time you made this statement, March 18, 1907?

A. I couldn't say; I was examined once before Mr. Ruick.

Q. Was that before you went into the Grand Jury or after? A. It was before.

Q. Then after you had gotten through talking with Mr. Ruick you went to the Grand Jury?

A. Yes, sir.

Q. At the time you went and were examined before Mr. Ruick did he swear you?

A. No, sir, he did not.

Q. Was it in his private office?

A. Yes, sir.

Q. Was anyone else present?

A. Yes, sir.

Q. Who?

A. I don't know; there was two parties there.

Q. As you understood, the stenographer and special agent of the Government?

A. Yes, sir.

(Testimony of Ery A. Wilmot.)

Q. Had you ever seen this typewritten statement, consisting of eleven pages, from the time you made this statement to Mr. Ruick until to-day?

A. No, sir.

Q. Will you pretend to say that all that you told Mr. Ruick is in this statement?

A. No, sir, it isn't all there, I am satisfied.

Q. You are satisfied it is not all there?

A. Yes, sir.

Q. Did Mr. Ruick at that time make any threats to you about what would be done in the matter of indicting you if you didn't testify as to what he desired?

A. Yes, sir.

Q. You may state fully on the record what he said to you in that respect, Mr. Wilmot.

A. He told me that they knew the truth of the matter all the way around, that there was no way of getting around it. I told him as far as I was concerned he would get the truth and nothing more.

Q. Did he state to you at that time, in substance, that they had positive evidence that money had been furnished by John I. Wells to prove up, and that that made your timber and stone entry fraudulent?

A. I believe he did; I know he said something to that effect.

Q. And did he say, in substance, to you, that if you would come through and tell the truth about getting this money from John I. Wells, that they wouldn't prosecute you?

A. I don't remember his making any such statement.

(Testimony of Ery A. Wilmot.)

Q. In substance that?

A. In substance I understood it was that way.

Q. It was understood that if you would testify as Mr. Ruick requested you to, you would be immune from prosecution? A. Yes, sir.

Q. And was this statement of March 18, 1907, made by you, in so far as this does contain your whole statement, with that understanding of immunity? Was this statement which you made to Mr. Ruick, a part of which appears here in typewritten form, made to him under that understanding and agreement of immunity on your part?

A. I believe it was; I won't say positively.

Q. So far as your part of it was concerned?

A. That is what I understood.

Q. That was the understanding you had when you made it? A. Yes, sir.

Q. Mr. Wilmot, you have told us that in talking to Mr. Ruick you intended to tell the truth, and you have to-day intended to tell the truth?

A. Yes, sir, as far as I can remember.

Q. Isn't that also true at the time you made your application to enter this land, didn't you at that time intend to tell the truth? A. I did.

Q. Isn't it true that at that time you did tell the truth, the first application?

A. Yes, sir.

Q. And at the time of making that first application you testified, did you not, before the land office, that at that time you had no understanding or agreement of any kind, with any person, firm, or

(Testimony of Ery A. Wilmot.)

corporation, by which the title you might acquire from the Government would inure in whole or in part to the benefit of any person except yourself?

A. At the time I filed it, yes, sir.

Q. That statement was absolutely true, was it not?
A. Yes, sir.

Q. And at the time you went up you paid all your own expenses?
A. Yes, sir.

Q. You hired a team and paid your share?

A. Yes, sir.

Q. You returned to the land office and paid your filing fees, did you, at the land office?

A. I did.

Q. You paid for publishing the notice?

A. I did.

Q. And you paid a \$25 locating fee?

A. Yes, sir.

Q. And at the time of making each of these several payments had you any agreement outstanding, with any person, express or implied, by which they were to get any interest in the land you were entering?
A. Not at that time.

Q. And at that time had anybody asked you to sell them any interest in that land?

A. No, sir.

Q. Had you at that time offered to sell anybody any interest in that land?
A. No, sir.

Q. Did you, at that time, know yourself to whom you were going to sell the land? I am speaking of the time you filed.

A. I aimed to keep it as an investment. That

(Testimony of Ery A. Wilmot.)

was my object when I took it.

Q. I think you testified here that you had a conversation with Mr. West, and also with your father, and in that conversation with your father it was suggested that if you made this entry and held it, it would be worth \$1,000 more than it cost you.

A. Yes, sir.

Q. At the time of making your entry had you any idea of anything except to hold it as an investment until such time as you could make a profit?

A. Not at that time.

Q. After you had made your filing, you say your business absorbed your money and you didn't like to take the money out of your business when it came time to make final proof?

A. Yes, sir, that is correct.

Q. So that you availed yourself of an opportunity which you had heard existed of getting the money from John I. Wells?

A. Yes, sir.

Q. And it was the understanding that if you did avail yourself of that opportunity, that after final proof, you could sell it to somebody and get \$250 in addition to what Wells had already given you?

A. Yes, sir.

Q. That is the straight fact, isn't it?

A. Yes, sir.

Q. And at the time you made your filing you didn't know that you were going to be short of money, and you didn't expect to get money from Wells?

A. No, sir, not at that time.

Q. So that the statement you made in the land

(Testimony of Ery A. Wilmot.)

office at the time you made application to purchase this land, that you did not have any agreement with any person, firm, or corporation, by which the title to the land which you might acquire from the United States would inure to any person, firm or corporation, was exactly true? A. Yes, sir.

Q. And that is your evidence here to-day?

A. Yes, sir.

Q. And if this statement contains anything contrary to that statement, this statement isn't true. If this typewritten statement, made before Mr. Ruick, contains anything that could be construed in any other way than that, then you were not correctly recorded. Isn't that right? A. Yes, sir.

Q. In looking over this to-day, this statement, purporting to be a statement before Mr. Ruick, who was present with you to-day when you looked this over?

A. Why, Mr. Wade there I believe was in the office.

Q. The special agent of the Government?

A. Yes, sir, I went all through it.

Q. From that examination, going through it, are you prepared to say that a large portion of the conversation you had with Mr. Ruick is not set out in this statement?

A. There was some of it I know that isn't set out in there.

Q. Wouldn't you say from an inspection of it that a large portion of the detailed talk is not set forth in this paper? In other words, Mr. Wilmot,

(Testimony of Ery A. Wilmot.)

this statement of March 18th appears to be all questions and answers, every word of it. Isn't it true that outside of question and answers you had a long conversation there, and no part of that conversation appears in this so-called statement?

A. No part of the conversation.

Q. I think you said that at the time you came down from viewing the land you paid John I. Wells a \$25 locating fee.

Q. Did Pat Downs tell you to pay that?

A. Yes, sir.

Q. You understood that at that time Downs and Wells were partners? A. Yes, sir.

Q. At the time you paid Wells the \$25 did he have any talk with you about what you should do with this land? A. No, sir, he did not.

Q. Did Mr. Downs, when he located you, have any conversation with you about what you should do with this land? A. No, sir, he did not.

Q. Did you tell any person, prior to the time you filed, what you intended to do with that land?

A. No, sir, I don't believe I did.

Q. Did you know yourself what you would do with it? A. No, sir, I did not.

Q. Did you make that entry solely for your own use and benefit? A. Yes, sir.

Q. Did you have any agreement with anybody?

A. No, sir.

Q. After you had paid Wells the \$25 and had made the original application to purchase, how long after that was it before your financial affairs were in

(Testimony of Ery A. Wilmot.)

such shape that you thought you would avail yourself of the opportunity to get the money from Mr. Wells?

A. It was something like three or four days, or a week, before I made final proof.

Q. So that up to that time you had intended to carry through the scheme as you originally started to do, to hold it as an investment? A. Yes, sir.

Q. And when you finally found that your financial affairs were such that you couldn't very well take the money out of your business you went to Wells?

A. No, I didn't go to Wells; I met him on the street.

Q. Well, that was after you had concluded that you hadn't better take the money out of your business? A. Yes, sir.

Q. And at that time you asked Mr. Wells where he thought you could get the money?

A. Yes, sir.

Q. And did he tell you he could get it for you?

A. Yes, sir.

Q. And did he get it for you? A. Yes, sir.

Q. And at the time he gave it to you, did he tell you that if you took the money that you should turn the land over to somebody he should direct?

A. No, sir.

Q. Mr. Wilmot, when he gave you that money, was there any talk as to what you should do with the land when you got title?

A. I don't remember whether there was anything

(Testimony of Ery A. Wilmot.)

said in regard to that or not.

Q. Isn't it a fact, Mr. Wilmot, that the only information you had on that subject was that Dean West had told you that you could hold the land if you wanted to, or if you wanted to dispose of it John I. Wells would buy it, and advance on the purchase price enough to make final proof, and take it off your hands for enough to make \$250?

A. Mr. West told me that.

Q. That was generally understood at that time, that if anybody wanted to get money to make final proof with, that John I. Wells represented somebody that would buy it and advance enough to make final proof?

A. Yes, sir.

Q. But that was an opportunity that you could avail yourself of if you saw fit?

A. Yes, sir.

Q. And at the time you made your filing you had no intention whatever of availing yourself of that opportunity?

A. No, sir.

Q. Of course, with that understanding which Mr. West had given you, when Mr. Pritchard gave you \$250, you understood that the other \$400 was being held for John I. Wells to be paid to him for his advance?

A. Yes, sir.

Q. In other words, you understood that Pritchard was buying for Wells at that time?

A. Yes, sir.

Q. And when you had this conversation with Mr. Ruick, he told you that was a violation of law which made you liable to criminal punishment, did he not?

(Testimony of Ery A. Wilmot.)

A. He did.

Q. And under those conditions you made the statement to him which you have testified to?

A. I believe so.

Q. This Mr. Ruick that you spoke of was the same N. M. Ruick that was deposed as district attorney, as you understand, for wrongful conduct before the Grand Jury?

A. I didn't know he was deposed; I knew he wasn't filling the position now.

Q. Didn't you understand that he had been removed for wrongful practice before the Grand Jury in connection with this case? A. Yes, sir.

Mr. KEIGWIN.—Mr. Bundy, will you go farther, and state on whose suggestion he was removed?

Mr. BUNDY.—I think the suggestion came in the form of a letter from Theodore Roosevelt.

Mr. KEIGWIN.—Will you say who suggested it to Mr. Roosevelt?

Mr. BUNDY.—Q. You don't know anything about any other person having any agreement with John I. Wells prior to the time they filed, except what some man by the name of Homer Allen told you, do you? A. No, sir, I don't.

Q. And he didn't speak for anyone but himself, did he, or did he speak for the bunch?

A. He said him and the other boys.

Q. Your understanding was that they were availing themselves of the proposition which you didn't intend to avail yourself of?

A. I knew at the time that they were transients,

(Testimony of Ery A. Wilmot.)

people just stopping here for a short time.

Q. The only information you had was what Mr. Allen gave you? A. That is all.

Q. You are entirely satisfied that you saw enough of this deed so that you saw Mr. Palmer's name?

A. I saw someone's name, but whoever it was I noticed that they were residents of Spokane.

Q. Mr. Palmer's name is A. E. Palmer, Spokane, State of Washington, is on the sixth line from the top. Is that it? A. Yes, sir.

Q. And in the top fold? A. Yes, sir.

Q. So that it would have been impossible for you to have seen the name of Mr. Palmer, the description, and the place for you to sign, if that deed had been folded up. What I mean is this; Mr. Ruick has something in this so-called statement there to the effect that this deed was all folded up and that you saw nothing but your name and the description. On looking at the deed, I will ask you if it would have been possible for you to see the description and Mr. Palmer's name and the place to sign unless the deed had been open.

A. It looks like it would be impossible.

Q. So that is possibly the result of an error on the part of Mr. Ruick or his stenographer, isn't it—don't you think so?

A. It must be, because I know I saw the name, that is, the place of residence of the party.

Q. Do you remember seeing the description of the land? A. Yes, sir.

Q. And you surely saw the place where you wrote

(Testimony of Ery A. Wilmot.)

your name? A. Yes, sir.

Q. Those three parts would have taken in the entire face of the deed. A. Yes, sir.

Mr. BUNDY.—The Government having failed, neglected, or refused to furnish the filing papers of this witness relative to the timber and stone entry made by him, and in which he has testified, the defendant moves to strike out the entire evidence of the witness until such filing papers are produced, and now serves notice that upon the production of such filing papers the defendant reserves the right to further cross-examine this witness with reference to them, and in the event of the failure of the Government to produce the papers, motion will be made before the Court to strike out all the evidence of this witness.

Redirect Examination.

(By Mr. KEIGWIN.)

Q. Mr. Wilmot, is there anything in this statement of your interview with the district attorney in March, 1907, which is incorrect, other than the matters which you have stated under examination to-day?

Mr. BUNDY.—I object to that as incompetent, irrelevant and immaterial, and not a proper way to put in impeaching or other evidence. The witness' attention should be called to some particular statement.

Mr. KEIGWIN.—There is no disposition or intention to impeach the witness.

Mr. KEIGWIN.—Q. Mr. Wilmot, you have read

(Testimony of Ery A. Wilmot.)

this statement to-day, and I have asked you a great many questions about it, and Mr. Bundy has asked you at great length about it. Is there anything else in this statement, other than you have already pointed out, which is incorrectly reported?

A. I couldn't answer that question without going over it.

Q. Do you remember the matters which were stated to the district attorney on the occasion of that interview which are not included in that statement?

A. Yes, sir.

Q. What did you say to the district attorney?

A. I didn't say nothing to him very much; it was mostly what he said to me.

Q. Was there anything in the way of a statement made by yourself to the district attorney which is material, which is not included in that paper?

Mr. BUNDY.—I object to that as incompetent, irrelevant and immaterial, asking the witness to supply parts of a statement made two years before, and not appearing on paper, from recollection.

Mr. KEIGWIN.—Q. Do you remember anything which you said to the district attorney which is not in there?

A. I remember asking him if I was under oath, and he told me I was not.

Q. Do you regard that as material, whether you were under oath or not? A. No, sir, I do not.

Q. You would tell the truth just the same, whether you were under oath or not?

A. I told it as I remembered it anyway.

(Testimony of Ery A. Wilmot.)

Q. Do you remember anything else that was said by you on that occasion which is not incorporated in that paper, having any material bearing on this matter?

A. I don't know—we had a pretty warm argument, but I don't remember just the substance of it.

Q. Are you prepared to say that there was anything material said by you on that occasion which is not included in the stenographer's report?

A. I remember telling him that I wanted him to get my answers absolutely correct, if he could.

Q. Anything else?

A. I don't remember anything else at this time.

Q. You say that Mr. Ruick promised you immunity from prosecution if you would testify?

A. Yes, sir, he did.

Q. What did he say about it?

A. Well, I don't remember—I remember that shortly after, he took my brother in there, and I know they had a pretty warm time.

Q. I am asking you now what did Mr. Ruick say to you about prosecuting you?

A. He told me he would not prosecute me.

Q. Did he say he wouldn't prosecute you if you told the truth?

A. He said he knew the facts, and I might as well tell them.

Q. What did he say about not prosecuting you?

A. He said if I would state the facts as he knew them he wouldn't prosecute me.

Q. Did he prosecute you?

(Testimony of Ery A. Wilmot.)

A. No, sir, he did not.

Q. Have you ever been indicted?

A. No, sir.

Q. I mean in connection with this matter.

A. No, sir.

Q. Did you tell him anything that wasn't true, because of his promise not to prosecute you?

A. No, I don't think I told him anything—he might have misconstrued my answers, though.

Q. I am talking now about what you intended to do. Did you intend to tell him anything untrue, because he promised you not to prosecute you?

A. No, sir, that wasn't my intention at all.

Q. What you told him was the truth, as you understood it?

A. My intention was to tell the truth.

Q. And what he has in that report is the truth as you understood it then, with the exception of such matters as you have testified to to-day as having been incorrectly reported?

A. Probably.

Q. According to the best of your recollection?

A. Yes, sir.

Q. Who is your attorney?

A. I haven't had any use for an attorney for some time.

Q. Have you taken legal advice about your testimony?

A. No, sir.

Q. Have you stated to any attorney or anybody else what you knew about this matter?

A. No, sir, I haven't talked to any attorney.

Q. Have you talked with anyone about this inter-

(Testimony of Ery A. Wilmot.)

view with Mr. Ruick in 1907?

A. No, sir, only with my brother.

Q. What is your brother's name?

A. Charlie.

Q. Have you ever told your brother, or anybody else, that you said a number of things to Mr. Ruick that were not included in that paper, on the occasion of this interview, in 1907?

A. That is, you mean more, or different?

Q. More things—other things. Let me put the question again. Have you told anybody that on the occasion of your interview, in March, 1907, with Mr. Ruick, you said to Mr. Ruick more things and other things than are contained in that stenographic report of the interview?

A. No, not on that subject, no, sir.

Q. On what subject do you mean?

A. On the subject of his sweating me in there; I got pretty warm and I said a few things to him there that isn't down.

Q. You don't understand my question, Mr. Wilmot. I am trying to find out to whom you communicated the facts as to what occurred at this interview. Have you told anybody what happened between you and Mr. Ruick in March, 1907?

A. Yes, sir.

Q. Who was it? A. My brother.

Q. Anybody else? A. No, sir.

Q. Never told any attorney? A. No, sir.

Q. Did you tell your brother that Mr. Ruick's stenographic report, which you have seen here to-day—had you seen it before to-day?

A. No, sir.

(Testimony of Ery A. Wilmot.)

Q. Since March, 1907? A. No, sir.

Q. Did you tell your brother, or anybody else, that that paper, which you first saw to-day, and which has been in your hands this afternoon, and which is now in Mr. Bundy's hands, did not contain all that passed between you and Mr. Ruick in March, 1907? A. I didn't tell it in those words.

Q. What words did you employ?

A. When I was before the Grand Jury here, almost the identical questions were asked me that were asked me by Mr. Ruick, and I stated to my brother that there was some there that I did not agree with.

Q. Did you have that statement in your hands when you were before the Grand Jury?

A. I believe not.

Q. Did you see it when you were before the Grand Jury? A. Yes, sir.

Q. Who had it?

A. I couldn't state now who had it.

Q. How did it come before your observation when you were before the Grand Jury?

A. They were asking questions from it.

Q. Did you read the statement when you were before the Grand Jury? A. No, sir.

Q. Do you know that it was that statement which somebody had before the Grand Jury?

A. I couldn't swear that it was that statement.

Q. It was simply a typewritten statement from which questions were put to you? A. Yes, sir.

Q. You don't know whether it was that paper or not? A. No, sir.

(Testimony of Ery A. Wilmot.)

Q. Did you tell your brother or anybody else that that paper did not contain all that you said to Mr. Ruick in March, 1907? A. Yes.

Q. Do I understand that without having seen this paper at any time, or knowing what was in it, you told your brother that that statement did not contain all the facts which you stated to Mr. Ruick?

A. I didn't make the statement in that form to my brother. I simply told him that the questions asked me before the Grand Jury were questions brought out relating to my answers to Mr. Ruick, and were not as I supposed they were, according to my recollection.

Q. Then you didn't tell Mr. Bundy that that paper didn't contain all the facts that you stated to Mr. Ruick?

Mr. BUNDY.—What do you mean by that? The record will show what he stated to me. Are you asking these questions for impeaching purposes? I object to it as incompetent, irrelevant and immaterial, and as attempting to impeach their own witness.

A. I made that statement, that it didn't contain all the facts.

Q. When did you make that statement—in your testimony to-day or before? A. To-day.

Q. You never told Mr. Bundy that before?

A. No, sir, I did not.

Mr. BUNDY.—You never spoke to me in your life, did you, Mr. Wilmot?

A. I don't believe I did—not to my recollection.

Mr. KEIGWIN.—Q. Then you never told any-

(Testimony of Ery A. Wilmot.)

body else that except your brother?

A. That is all.

Q. When you went to Mr. Wells to get this money, Mr. Wilmot, did you tell him what you wanted it for?

A. I sure did.

Q. You told him you wanted to prove up?

A. Yes, sir. I believe I asked him if he knew where I could get the money to prove up with, and he said he would—he said he could get it.

Q. He said he could get it for you?

A. Yes, sir.

Q. Has anybody told you, at any time, that if you were to admit in your testimony here that you had had an unlawful agreement in respect to this land that you would be liable to be prosecuted?

A. No, sir.

Q. Have you heard that statement made?

A. No, sir, I have not.

Q. Did you read the "Boise Statesman" yesterday?

A. I did not.

Q. You didn't read anything in that paper?

A. No, sir.

Q. You have never heard anybody intimate that if you or anybody else would admit any unlawful conduct in this matter you would be liable to be sent to the penitentiary. Mr. Ruick told you that you would be liable to go to the penitentiary, didn't he, if you had made an unlawful agreement? Is that true?

A. That is true.

Q. So that you were informed in March, 1907, that if you had made an unlawful agreement you

(Testimony of Ery A. Wilmot.)

would be liable to go to the penitentiary?

A. He tried to make me believe I had.

Q. You hadn't—you didn't tell him that you had?

A. No, sir.

Mr. BUNDY.—Mr. Ruick said that he would see to it that you weren't indicted if you would testify as he wanted you to, didn't he?

A. That was the understanding.

Mr. KEIGWIN.—Q. Did he say it in those words?

A. He didn't say it in those words; that was the understanding.

Q. Did he tell you that if you would testify falsely as he wanted you to that he wouldn't prosecute you? A. He didn't say that.

Q. What did he say?

A. He simply said he knew all the facts in the case, and he wanted me to come through, and I started to tell him, and he said, "that won't do; I know better than that." He says, "I have got evidence here that I know what was going on," and I said, "What is it?" and he wouldn't tell me.

Q. Did he tell you that he wanted you to testify falsely? A. No, sir.

(Witness excused.)

At this time court adjourned until 10 A. M., Tuesday, February 16, 1909, at which time court met, pursuant to adjournment, the Examiner and counsel for the respective parties being present.

[Testimony of Jeannette B. Cooper, on Behalf of the Complainant.]

JEANNETTE B. COOPER, produced as a witness on behalf of the complainant, being first duly sworn, testified as follows:

Direct Examination.

(By Mr. GORDON.)

Q. You are Miss Jeannette B. Cooper, are you?

A. Yes, sir, that is my name.

Q. Where do you reside, Miss Cooper?

A. I am here in Boise for the present, but my home is at Idaho City in the summer.

Q. How long have you lived in Idaho City?

A. I guess it is seventeen years.

Q. What is your occupation?

A. I am going to Mr. Link's business college at present.

Q. What was your occupation in 1902?

A. Well, I was with Mrs. Kempner. I make my home with her, and I was helping her at the ranch at that time, because I have been with her all the time in the seventeen years except when I have been down here and on a visit east.

Q. You took up a claim under the Timber and Stone Act in 1902, did you?

A. I took up a claim. I don't remember what year. I took up a claim. I suppose it was at that time.

Q. Did you sign this paper, timber and stone sworn statement, dated October 17, 1902?

(Testimony of Jeannette B. Cooper.)

A. Yes, that is my signature.

Q. I show you non-mineral affidavit, dated October 17, 1902, and ask you if you signed that paper.

A. Where would I have signed that? I mean where would it have been sworn to?

Q. At the land office.

A. I think I did sign a paper at the land office.

Q. Is that your signature? A. Yes.

Q. I show you the testimony given on final proof, dated February 18, 1903, and ask you if that is your signature. A. That is my signature.

Q. I show you deed, dated February 20, 1903, made by Jeannette B. Cooper to Horace S. Rand, and ask you if that is your signature.

A. Yes, sir, that is my signature.

Q. And you acknowledged that before L. M. Pritchard, did you?

A. I think so—I really don't know.

Q. Miss Cooper, who first spoke with you about taking up a timber claim?

A. Really, I can't say who, because in the first place Mrs. Kempner had a stopping place there for all those who took up the claims, and we took up our claims about the last ones, and there had been so many people taking up claims there that I couldn't say who spoke to us first.

Q. You knew Mr. Patrick Downs?

A. Yes, sir.

Q. Mr. John I. Wells? A. Yes, sir.

Q. Did you know Mr. Louis M. Pritchard?

A. I can't say that I know him.

(Testimony of Jeannette B. Cooper.)

Q. How far from the Kempner ranch is this claim that you took up?

A. I couldn't say that exactly, but the claim was within two or three miles from the North Fork of the Boise.

Q. How far is that from where you live?

A. I couldn't tell you just how many miles. I know that it took all day to go, and to have our lunch, and to get home. We got home at dark. It took us that long, so I couldn't say how many miles it was. It was a mountainous country, and I wasn't a judge of distances.

Q. Did you go to look at this claim by yourself, or who went with you?

A. Mrs. M. H. Kempner, my sister, and Mr. Patrick Downs, and there was two other ladies went that day, and a couple of other men, and I don't remember the names of them.

Q. Did Mr. John I. Wells go with you?

A. No, I don't think he was with us that day. I am sure he wasn't. There was a lady that lived in South Boise; I did remember her name, but I can't remember it now—Mrs. Joplin was the lady; and then there was another lady and her husband, whose names I don't remember.

Q. Did you have an arrangement by which you were to pay Mr. Downs for locating you?

A. No, sir, not any arrangement whatever.

Q. Did you know that he was going to locate you?

A. Yes, we knew he was going to locate us, because he had taken everyone else; each day he took

(Testimony of Jeannette B. Cooper.)

parties out. We knew he was the man that did that, so we expected he would take us to locate the claims.

Q. Perhaps you didn't understand my question. I asked you if you had any arrangement to pay Mr. Downs. I meant did you pay him a fee for locating you?

A. In the long run we did; that is what I understood. We didn't pay him then, but along in the spring I am sure that Mr. Downs received a certain amount of money for his locating us.

Q. Where did he get that from?

A. After we sold.

Q. Was that taken out of the amount that was given you when you sold?

A. I think so, but I will tell you—my brother in law, Mr. Kempner, told us girls that there was a market for the claims that spring, and if we wanted to sell ours we could, and we said we would just as soon sell them and turned them over to him, and he told us that Mr. Downs received, I think it was \$25 for each one of us.

Q. How much money did you get in cash out of the claims? A. \$800.

Q. Did you get \$800 yourself?

A. Yes, sir.

Q. In money? A. Yes, sir.

Q. Who gave it to you?

A. Mr. Kempner, my brother in law, brought it down to the house and gave it to me.

Q. Did he bring it to you before you signed this deed?

(Testimony of Jeannette B. Cooper.)

A. No, I think not; we went up to an office and signed the deed, and then my brother in law brought me the money.

Q. How long was that after you signed the deed?

A. I couldn't say; it might have been only a day or two. It has been quite awhile ago, and I don't really remember just how long.

Q. When you looked at this claim, was one pointed out to you for you to take, and you took that claim?

A. Yes, sir.

Q. What did Mr. Downs say—show you a claim and say that that was your claim?

A. He showed me a claim and said that was my claim, and took us on the claim.

Q. Did he give you a description of the claim?

A. I think so.

Q. Then you returned to Kempner's ranch?

A. Yes, sir.

Q. Do you remember taking the paper with you that he gave you?

A. Really, I do not.

Q. Do you know whether he gave you a paper?

A. I couldn't say for sure that he did, but I think he did, but I don't remember what I did with the paper.

Q. How long after you saw this land did you come to Boise to file your first papers?

A. I don't know exactly, but I know we must have taken up the claims—I know it was late in the fall, but we came down along some time that same fall or winter and filed on the claims.

Q. Did you come to Boise the next day, or sev-

(Testimony of Jeannette B. Cooper.)

eral days afterwards, to file your papers?

A. No, it must have been three or four weeks anyway, if it was not longer than that.

Q. When you came did you come alone, or with whom did you come?

A. No, I came with Mr. and Mrs. Kempner.

Q. Did you go to Mr. Wells' office when you got here?

A. No, I didn't know that Mr. Wells had an office.

Q. Whose office did you go to?

A. To file on the claims? We went to the land office.

Q. Did you go to Mr. Kinkaid's office?

A. We were in Mr. Kinkaid's office to sign some paper—I think the deeds.

Q. Was that the day you filed your first papers?

A. No, I don't think so.

Q. I am speaking about the first time you went to the land office.

A. We didn't go to Mr. Kinkaid's office that day.

Q. Where did you get this first paper and this non-mineral affidavit that you filed in the land office?

A. Really I can't remember about that paper; I can't remember anything about it.

Q. Wasn't Mr. Kinkaid at the land office that day? A. No, sir, he wasn't there.

Q. Did Mr. Kinkaid introduce you to Mr. King, the register of the land office?

A. No, sir, I didn't see anyone there at the land

(Testimony of Jeannette B. Cooper.)

office whom I knew but Mr. Garrett, who was a clerk there.

Q. He was the receiver.

A. He was the gentleman that I saw.

Q. I show you sworn statement, which you have identified, and ask you who prepared that paper for you?

A. I don't know, but I can't read this; that is, I wear glasses over at school, and I haven't them on this morning, but I will see if I can read it. Couldn't you read it to me?

Q. Yes, but I wanted you to see the writing, and see if it wouldn't refresh your memory as to where you got the paper and who prepared it for you.

A. I don't recognize the writing at all.

Q. The certificate of the register reads here: "I hereby certify that the foregoing affidavit was read to affiant in my presence before he signed his name thereto; that said affiant is to me personally known (or has been satisfactorily identified before me by John Kinkaid, attorney)." Now, this certificate is dated October 17, 1902.

Mr. BUNDY.—I object to counsel interrogating the witness about some certificate of some land office official unless she knows something about it.

Mr. GORDON.—I am asking her if she knows anything about it.

The WITNESS.—I think it was about October, or about that time, that we filed on the claims.

Q. You say that Mr. Kinkaid wasn't there and didn't introduce you at the land office?

(Testimony of Jeannette B. Cooper.)

A. No, sir, Mr. Kinkaid wasn't there; Mr. Kempner knew Mr. Garrett and he introduced us.

Q. You don't know where you received this non-mineral affidavit from either?

A. No, I can't remember about that.

Q. Did you pay any money into the land office the day you filed that sworn statement?

A. Yes.

Q. How much did you pay?

A. I think \$400.

Q. Not on that occasion. There were two occasions. You are not distinguishing between the time you filed and the time you made final proof.

A. I don't remember paying any money but the one time; I am sure I didn't.

Q. Did you ask Mr. John I. Wells to examine this claim for you? A. No, sir.

Q. Did you ask him to be a witness for you?

A. No, sir.

Q. After you filed, several months, you made what is called final proof? A. Yes, sir.

Q. Do you remember who was with you when you made your final proof?

A. Mrs. Kempner and Mr. Kempner.

Q. And do you remember how much you paid into the land office at that time?

A. \$400 is what I paid.

Q. Now, had you been to Mr. Kinkaid's office at that time? A. No, sir.

Q. Had you met Mr. Kinkaid at that time?

A. I know him for several years; he lived in

(Testimony of Jeannette B. Cooper.)

Idaho City before he came down here, but at that time I didn't know that he had anything to do with this business.

Q. Now, this \$400 that you paid into the land office, did you pay that in check or in cash?

A. In cash.

Q. Where did you get that from?

A. I got that money from Mr. Kempner just as a matter of accommodation, because I was able to have bought a few claims for myself if I had wanted to, but my money was tied up just at that time, so he gave me the money, he lent it to me, and I made that statement in the land office—I remember they asked me the same question.

Q. When did he lend you that money?

A. Well, along that winter just before I came down.

Q. Was it the day you paid the money into the land office, or a day or two before, or when was it?

A. Really, I couldn't say about that. I was getting ready to go to St. Louis to visit, and he let me have the money, and he let me have money for other purposes, so I couldn't say what date. I always called on him for money when I needed it.

Q. Did you go to Mr. Kinkaid's office the day you made your final proof?

A. No, sir, I never was there but the one day, the day I signed the deed.

Q. When was that?

A. I don't remember the date.

Q. How long after you went to the land office?

(Testimony of Jeannette B. Cooper.)

A. I couldn't say.

Q. Did you return to Idaho City?

A. No, sir, Mrs. Kempner had a house down here and was living here that winter, and I lived with her.

Q. What is your best recollection of how long after you made your final proof did you go to Mr. Kinkaid and sell this land?

Mr. BUNDY.—Mr. Gordon, the dates are all in evidence here.

Mr. GORDON.—I am asking her, and she is my witness.

Mr. BUNDY.—It is childish, boyish, to ask her to identify her deed, and then to cross-question here as to the time she made her deed is simply silly.

Mr. GORDON.—Q. I have asked you how long it was after you went to the land office and made your final proof that you started negotiations with Mr. Kinkaid with the view of selling this property.

A. I couldn't really say just how long that was.

Q. Was it a day or a month?

A. It wasn't a day, and it surely was longer than a month.

Q. And you had never seen Mr. Kinkaid with reference to this property until the day you sold him the property?

A. Never had seen him, and didn't know he had a thing to do with it in the world until the day I signed the deed.

Q. Did you go to Mr. Kinkaid's office that day alone?

A. No, Mr. and Mrs. Kempner went with me.

(Testimony of Jeannette B. Cooper.)

Q. Did you talk with Mr. Kinkaid about selling this property?

A. Well, I can't say that I had any conversation with him about it especially; I was there and waited until he got the papers ready, and signed them.

Q. Did you have any talk about it with him?

A. No, sir.

Q. Did he pay you in cash or in check?

A. I don't know. To tell you the truth, Mrs. Kempner and I left Mr. Kempner to tend to that for us, and Mr. Kempner came home and paid the money over to me in his sitting-room.

Q. Do you know who prepared this deed? Did Mr. Kinkaid prepare that deed?

A. I would judge so; I don't know though; I couldn't say.

Mr. GORDON.—We offer in evidence the sworn statement identified by the witness; the non-mineral affidavit, also identified by the witness; the notice of publication, dated October 17, 1902; the testimony of claimant, given on final proof, dated February 18, 1903; the cross-examination attached, which has been identified by her; the testimony of the other witnesses, and the cross-examination thereto, given on final proof; the register's and receiver's certificates, dated February 18, 1903, the deed identified by Miss Cooper, dated February 20, 1903; and certified copy of the patent, dated June 10, 1904, all to the southeast quarter of the southwest quarter, and the south half of the southeast quarter of section 30, and the southwest quarter of the southwest quarter of

(Testimony of Jeannette B. Cooper.)

section 29, township 7 north of range 8 east, Boise Meridian.

(Marked Plaintiff's Exhibit No. 79A to 79S inclusive.)

Q. Did you ever make but the one deed to this property? A. No, sir.

Q. Were you ever asked to make another one?

A. No, sir, never.

Cross-examination.

(By Mr. BUNDY.)

Q. Miss Cooper, you are a sister of Mrs. Kempner? A. Yes, sir.

Q. Who, in 1902, was living at what is known as the Half-way House?

A. At the Kempner ranch?

Q. The Kempner ranch was, during that fall of 1902, a stopping place for people from Boise, going to and from the timber in the mountains?

A. Yes, sir.

Q. Can you state in a general way to what extent people were stopping, going and coming, how many people a day, in September and October of that year?

A. I couldn't say just how many. I know we were just as busy as we could be. Sometimes there were as many as three teams coming and going a day. As every party that came had to stay over night they were always coming and going.

Q. You have lived here long enough to know the people of this community by reputation, I suppose.

A. Yes.

Q. And a good many of the people that came there

(Testimony of Jeannette B. Cooper.)

you knew of, if you didn't know them personally?

A. Yes, sir.

Q. What was the class of people that were coming and going, or what class of people were they, speaking generally?

A. I should say they were the better class of people.

Q. Many of the business men and their wives?

A. Yes, sir.

Q. People of means and character?

A. Yes, sir, some people that I really had thought to myself that I was surprised to see them come up to take up a timber claim; I thought they didn't need it.

Q. Pat Downs made his headquarters a good deal of the time there at the ranch?

A. Yes, sir, that was his headquarters.

Q. And, of course, you knew him pretty well?

A. He came up there during the summer.

Q. He was a sort of a member of your household there that summer, wasn't he?

A. Yes, sir, he boarded and roomed there.

Q. Did Downs ever ask you, invite you, or solicit you to take up a timber claim?

A. No, sir, he never did. In fact, we just saw everyone else there taking up timber claims, and thought "Why not take one up ourselves?" Mr. Kempner was at Thunder Mountain; he was away from home during nearly the whole summer, just coming home on certain trips, so we just thought we would take up claims, because the other people were.

(Testimony of Jeannette B. Cooper.)

Q. That is, you and your sister, Mrs. Kempner?

A. Yes, sir.

Q. And when you asked Mr. Downs about locating you he told you he could do it? A. Yes.

Q. But you had no conversation with him at that time about what you were to pay him?

A. Not a thing; I didn't know I was to pay him anything until we received the money for the claims.

Q. That was the first intimation, after you had sold your land, that there was any charge?

A. Yes, sir.

Q. You don't mean that you had any understanding when you made your location that you were to pay him anything?

A. No, I didn't have any understanding any way.

Q. And Mr. Kempner told you, when he paid you the money, that they kept out \$25?

A. Yes, sir.

Q. And you understood that that was to pay for the locating? A. Yes, sir.

Q. You said something about what Mr. Kempner told you and your sister with reference to there being a market in the spring?

A. Yes, Mr. Kempner came to us and said, "There is a market for the claims," and he said, "If you girls want to sell yours you can; just do as you please about it."

Q. That was after you made final proof?

A. Yes, sir.

Q. So that the negotiations as to price and things

(Testimony of Jeannette B. Cooper.)

of that kind were carried on by your brother in law, Mr. Kempner?

A. I didn't know it was with Mr. Kinkaid; my brother in law didn't say.

Q. But you then authorized him—

A. Yes, sir.

Q. When you went up to Mr. Kinkaid's to sign the deed, the arrangement had practically been made before that?

A. Yes, I just looked over the deed and signed it.

Q. Your brother in law having attended to the negotiations? A. Yes, sir.

Q. You were asked about Mr. Downs pointing out a certain claim to you, and saying "This is your claim." Did you understand that the right of selection of a claim was taken away from you?

A. I didn't understand that at all.

Q. He simply showed you a claim, which he advised you was a suitable one, and you took it?

A. Yes, sir, I will tell you—I have been up in the hills and mountains for seventeen years, and it is all beautiful land, and if I could take you there and show you the claim, it is a beautiful claim.

Q. The inference counsel tried to leave was that Mr. Downs was trying to select your claim for you, and telling you "This is the one you have to take."

A. Mr. Downs did say, "Miss Cooper, this is the claim I have selected for you."

Q. But if it hadn't been satisfactory to you, you could have taken another one?

A. I know I never could do any better; I would

(Testimony of Jeannette B. Cooper.)

have liked to hold that timber forever, it was so pretty.

Q. You remember that you went to the land office twice? A. Yes, sir, I think so.

Q. When you went to file on it a certain fee was required to be paid at the land office—I think \$7.50 or \$12.50. Do you recall anything about that?

A. I couldn't say that I remember the instance, but I am sure that if the fees were required I paid them.

Q. And paid them with your own money?

A. Certainly.

Q. When you filed your first paper, on October 17, 1902, you signed a statement in which you said, among other things: "That I have not, directly or indirectly, made any agreement or contract, or in any way or manner, with any person or persons whomsoever, by which the title I may acquire from the Government of the United States may inure in whole or in part to the benefit of any person except myself." That statement was absolutely true at the time you made it, was it not?

A. Yes, sir, it was an absolutely true statement. I hadn't made any agreement whatever.

Q. And that same statement was true at the time you made your final proof? A. Certainly.

Q. It is charged in the bill of complaint, by the Government through these, its officers, Miss Cooper, that you entered into an unlawful and wicked and unholy conspiracy with the Barber Lumber Company and the other defendants, for the purpose of defraud-

(Testimony of Jeannette B. Cooper.)

ing the United States out of the lands you entered. Is that true or false?

A. Certainly that is false.

Q. And it is further alleged in this complaint by the United States that for the purpose of effectuating that fraud you entered this land for the benefit of the Barber Lumber Company and the other defendants, and went before the land office at their instance and request, and testified falsely, in order to get this land for them. Is that true or false?

A. That is false.

Q. And it is alleged that you, together with some two hundred more of the good people of this community, entered your land simply as the stool pigeon of the Barber Lumber Company and the other defendants. Is that true or false?

A. That is false.

(Witness excused.)

[Testimony of Annie E. Kempner, on Behalf of the Complainant.]

ANNIE E. KEMPNER, produced as a witness on behalf of the complainant, being first duly sworn, testified as follows:

Direct Examination.

(By Mr. GORDON.)

Q. What is your name, Mrs. Kempner?

A. Annie E.

Q. And what is your husband's name?

A. Moses H. Kempner.

Q. Where do you reside, Mrs. Kempner?

A. I reside at Idaho City most of the time. We

(Testimony of Annie E. Kempner.)

have a ranch up there, and we are just up there in the summer, and we have a little home in Idaho City.

Q. You lived at the ranch in 1902?

A. Yes, sir—well, as I say, we live there in the summer time. We was there that summer that they took up those claims.

Q. You took up a timber claim in 1902, did you?

A. Yes, sir.

Q. I show you sworn statement, dated October 17, 1902, and ask you if that is your signature to it.

A. Yes, sir, it is.

Q. I show you non-mineral affidavit of the same date, and ask you if you signed that paper.

A. Yes, sir.

Q. I show you testimony given on cross-examination on final proof, dated February 18, 1903, and ask you if you signed that.

A. Yes, sir.

Q. And the cross-examination attached. Is that your signature to that?

A. Yes, sir.

Q. I show you deed, dated February 20, 1903, made by Mrs. Annie E. Kempner and Moses H. Kempner, to Horace S. Rand, and ask you if you signed that deed.

A. Yes, sir.

Q. And is that your husband's signature?

A. That is my husband's signature.

Q. Mrs. Kempner, did you at that time know John I. Wells?

A. Yes, sir.

Q. Did you know Patrick Downs?

A. I did.

Q. Did you know John Kinkaid?

A. Yes, sir.

(Testimony of Annie E. Kempner.)

Q. Did you know Mr. Louis M. Pritchard?

A. No, sir.

Q. Who located you on your timber claim?

A. Patrick Downs.

Q. Did you go to view this land with a party or by yourself?

A. I went—I think there was eight or ten in the party. I disremember the exact number, but there was eight or ten of us went that day. My sister, Miss Cooper, was one.

Q. And your husband was with you?

A. I don't think my husband was, that day. I think he took his claim up either a day or two before or a day or two after.

Q. And who else, do you remember?

A. There was four gentlemen, young men, from Boise—I don't remember their names—and there was two ladies besides my sister and I.

Q. Did Mr. Downs go along? A. Yes, sir.

Q. Was Mr. Wells there that day?

A. No, sir.

Q. Did you see Mr. Wells that day?

A. No, sir.

Q. Did you ask Mr. Wells to go over that claim with the view of being a witness for you?

A. No.

Q. Now, when Mr. Downs was locating you, did he take you out to one of these claims and say, "This is the claim I have selected for you, Mrs. Kempner," or what did he say?

A. I don't know that he did say that—I disre-

(Testimony of Annie E. Kempner.)

member that—but anyway when we went he said “You can just have any of these claims, any one of them; decide whichever claim you would like to have; you can suit yourself.” The way we came to take up claims was, there was a great many of the people of Boise coming up there, and I think we took up our claims late in the fall. I am a little nervous. I have been sick all winter, and I wish to be excused.

Q. You can take your time, Mrs. Kempner; there is no hurry about it. How many claims did Mr. Downs show you personally?

A. I couldn't tell you that.

Q. Did he show you a claim and ask you if that was the one you would take, and did you demur to it, or what did you do?

A. I couldn't tell you that. We had so many up there all summer, and so we saw everyone else taking up claims, and we took up one, and it was immaterial which one it was.

Q. Did Mr. Downs give you a description of that property?

A. Yes, sir.

Q. What did you do with that description?

A. I don't know.

Q. Did you bring it to Boise?

A. I think I did—I think I just turned it over to my husband.

Q. And you and your husband and Miss Cooper came down together?

A. Yes, sir.

Q. Do you know who prepared this first paper I showed you, the sworn statement?

A. No, sir, I do not.

(Testimony of Annie E. Kempner.)

Q. Do you know where you received that paper and the non-mineral affidavit I showed you?

A. We went to the land office.

Q. Did you go to any other office that day?

A. I don't think we did.

Q. Was Mr. Kinkaid at the land office with you?

A. No, sir.

Q. Did you see Mr. Kinkaid that day?

A. No, I didn't see him that day. If I did, I disremember. It has been eight years ago, hasn't it?

Q. It has been seven years ago almost. What is your best recollection—whether you saw Mr. Kinkaid that day or not.

A. I saw Mr. Kinkaid, but I don't know that I saw him that day.

Q. When was it that you saw him with reference—

A. (Interrupting.) I don't know that I saw him in reference to these papers, but perhaps we did.

Q. Do you remember being in Mr. Kinkaid's office on business concerning the property, your claim?

A. No, sir, I do not.

Q. Were you ever in his office?

A. I believe I was one time, but I don't remember being there with these papers.

Q. Were you in Mr. Kinkaid's office with your husband and Miss Cooper?

A. Yes, I believe I was.

Q. Was it in relation to this property?

A. I just came up town, and I met Mr. Kempner, and I think we were in his office, but I couldn't tell

(Testimony of Annie E. Kempner.)

you now what it was about.

Q. Do you know in whose office you signed this deed, or where you signed it?

A. No, sir, it might have been in Mr. Kinkaid's office, but I tell you I disremember.

Q. Did you pay Mr. Downs anything for locating you? A. I did.

Q. When?

A. Well, I came down here late in the fall to send my daughter to school, and it was after I came down—I don't know just when—but we didn't pay him at the time we took up the claims. I don't know when it was paid, or just what day, or anything about that, because I am a woman that has had so much to do at home that I just leave things for my husband to see to.

Q. Was this amount deducted from the money that was given you when you sold the property?

A. No, sir, I don't think so.

Q. When you filed your first paper in the land office, what was called the sworn statement, did you pay any money in the land office at that time?

A. Yes, sir.

Q. How much? A. I think we paid \$800.

Q. That was the second time you went there. I mean the first time you were there. Did you go there more than one time?

A. Positively, I don't remember.

Q. And you did go back there one time and pay, you say, \$800?

A. I take that back. I don't know. I tell you

(Testimony of Annie E. Kempner.)

I disremember, and you will have to excuse me, because Mr. Kempner furnished us the money, and I don't remember how it was given in. I remember I was questioned as to where I got the money to pay for my claim.

Q. And Mr. Kempner was with you there?

A. Yes, sir.

Q. And he paid the money for your claim and for the one he took up at that time? A. Yes, sir.

Q. He paid for his at the same time, as you understood it? A. Yes, sir.

Q. He didn't give you the money to pay for yours? He paid for it for you, did he?

A. I don't remember. He might have paid for it for me. I have cooked and waited on so many people that my health was so poor I couldn't hardly sit up, and I was doctoring, and my memory is not so good as it ought to be.

Q. You can just take your time. Do you remember when your husband gave you the money with which you made final proof? Do you remember whether he gave it to you at the land office, or the day before, or when?

A. Well, I think he gave it to me several days before, if I remember right. Yes, I am positive he did.

Q. Do you remember the occasion of him giving it to you? Did he tell you what he gave it to you for?

A. Yes, he said it was, I supposed, to pay for the claim.

(Testimony of Annie E. Kempner.)

Q. Where was that—at Idaho City or down here in Boise?

A. I think it was down here, after we came down.

Q. And how many days were you here before you made your final proof?

A. I couldn't tell you. My daughter was down here going to school, and I didn't get to come down here with her, but I came down later in the fall and I stayed here all winter. She was going to high school.

Q. Do you remember this question being asked you at the land office: "Where did you get the money with which to pay for this land, and how long have you had same in your actual possession?" Do you remember that question? A. Yes, sir.

Q. And do you remember whether or not you made this answer: "Mr. Kempner gave me the money to buy this land. Several years."

A. I remember that I told a lady in the land office—

Q. You made that answer? A. Yes, sir.

Q. Then, as you remember it now, or as you remembered it then, your husband had given you that money several years before, and didn't give it to you just a few days before?

A. I think he gave it to me. Of course, my husband has money and I can get money any time I want to, but I didn't know several years before that I was going to take up a claim. Mr. Kempner has always been a man that would give me money any time I needed it.

(Testimony of Annie E. Kempner.)

Q. You have identified a deed here, as the deed you made to this property upon which you filed, and I will ask you to whom you sold it.

A. Well, I just told you I didn't have anything to do with the selling of it. My husband done that.

Q. Did you talk with Mr. Kinkaid about selling it? A. I didn't, no.

Q. Did you know Mr. Horace S. Rand?

A. No, sir.

Q. Did you receive the proceeds of the sale of this property?

A. I received part of it. I received what I was supposed to get for my claim.

Q. How much did you receive?

A. We paid \$400 for the claims and sold them for \$800.

Q. Did you get \$800? A. Yes, sir.

Q. Your husband gave you \$800?

A. Yes, sir.

Q. Did he take out the \$25, or did you pay him the \$25 he paid Mr. Downs?

A. No, not out of that; I think he just paid it out of his pocket, but we were each one supposed to pay Mr. Downs for his trouble.

Q. Do you know where you signed this deed?

A. Well, I couldn't—I don't believe I can tell you that. We lived on Franklin street, and when we came down town—I tell you I disremember where we went in to sign these papers. I am sorry that I can't tell you.

Q. Is Mr. Kempner here this morning?

(Testimony of Annie E. Kempner.)

A. No, sir, he is in the east. I wish he was here.

Q. When is Mr. Kempner coming home?

A. He may not be home till June. He is east on mining business. He was in the east all last winter.

Mr. GORDON.—We offer in evidence the sworn statement of Mrs. Kempner, dated October 17, 1902; the non-mineral affidavit, identified by her, dated the same day; the notice for publication; the testimony of Mrs. Kempner, given on final proof, dated February 18, 1903; and the cross-examination, identified as having been signed by her, attached; the testimony of the other witnesses, given on final proof; the register's and receiver's certificates, dated February 18, 1903; the deed, dated February 20, 1903, made by Moses H. Kempner and Anne E. Kempner, to Horace S. Rand, consideration \$1600; and certified copy of the patent, dated June 10, 1904; all to the northeast quarter of section 32, township 7 north of range 8 east, Boise Meridian. The deed also contains the west half of the northeast quarter, the southeast quarter of the northeast quarter of section 19, and the southwest quarter of the northwest quarter of section 20, township 7 north of range 8 east, Boise Meridian.

(Marked Plaintiff's Exhibit No. 80A to 80N, inclusive.)

•
Cross-examination.

(By Mr. BUNDY.)

Q. How long has your husband been in the east, Mrs. Kempner? A. About six weeks, I think.

Q. So that since you were subpoenaed here, of

(Testimony of Annie E. Kempner.)

course, you haven't had a chance to talk to him about it?

A. No, sir, I have not.

Q. Or anybody else?

A. No, sir.

Q. Have you been asked to go into a room back here?

A. No, sir.

Q. Has your sister, Miss Cooper?

A. No, sir, she has not.

Q. So you haven't talked it over with any representative of the Government?

A. No, sir.

Q. At the time you filed your first paper in the land office, which we call the filing or sworn statement—Mrs. Kempner, you signed a statement, which has been shown to you, and in that statement you testified that you had not, at that time, made any agreement of any kind, with any person, firm, or corporation, by which you had agreed to turn over the title you might acquire, or any interest in it, to any person, firm, or corporation other than yourself. That was true, was it not, at that time?

A. Yes, sir.

Q. And the same statement was true when you made your final proof?

A. Yes, sir.

Q. Up to the time you made final proof, nobody had offered to buy, and you had not offered to sell, and you had had no conversation as to what you should do with this land, had you?

A. No, sir.

Q. Mrs. Kempner, the United States has seen fit in this lawsuit to charge that you, and your sister, and a great many other people of this city, entered into a wicked and unlawful conspiracy to defraud the United States out of certain lands. Is that true or

(Testimony of Annie E. Kempner.)

false, as far as you are concerned?

A. I think that is false, as far as I am concerned, because I wouldn't do anything wrong against the Government, if I knew it, any time.

Q. It is also charged in this bill of complaint, Mrs. Kempner, that you entered into an agreement with the Barber Lumber Company and the other defendants, by which you agreed to go and enter this land, and go before the land office and testify falsely in order to get this land and turn it over to the Barber Lumber Company. Is that true or false?

A. It is false.

(Witness excused.)

[Testimony of John E. Hobbs, on Behalf of the Complainant.]

JOHN E. HOBBS, produced as a witness on behalf of the complainant, being first duly sworn, testified as follows:

Direct Examination.

(By Mr. GORDON.)

Q. Your name is John E. Hobbs?

A. Yes, sir.

Q. Where do you reside, Mr. Hobbs?

A. Kuna, Idaho.

Q. How old are you? A. Twenty-eight.

Q. What is your business? A. Assayer.

Q. And that was your business in August, 1903?

A. It was.

Q. You took up some land under the Timber and Stone Act in 1903, did you, Mr. Hobbs?

(Testimony of John E. Hobbs.)

A. I did.

Q. I show you timber and stone land sworn statement, dated August 10, 1903, and ask you if you signed that paper?

A. Yes, I guess I did. That is my signature.

Q. I show you non-mineral affidavit, dated August 10, 1903, and ask you if that is your signature to that paper.

A. It looks like mine.

Q. I show you testimony given on final proof, signed John E. Hobbs, dated November 10, 1903, and ask you if you signed that.

A. Yes, sir.

Q. And the cross-examination attached—is that your signature to that?

A. Yes, sir.

Q. I show you deed, dated December 17, 1903, John E. Hobbs to Horace S. Rand. Is that your signature to that deed?

A. Yes, sir.

Q. Mr. Hobbs, who was the first person that spoke to you about taking up this land?

A. Mr. Harrington.

Q. What is his first name?

A. I couldn't say for sure.

Q. Where does he live?

A. I think he is in Nevada.

Q. How long has it been since you have seen him?

A. It must be two or three years—possibly longer.

Q. What did he say to you about taking up one of those claims?

Mr. BUNDY.—I object to that as incompetent, irrelevant and immaterial, and calling for hearsay evidence, a conversation with a person not a party

(Testimony of John E. Hobbs.)

to this action, and not in the presence of any of the defendants.

A. Why, he told me that I had a chance to take up a claim if I wanted to, and make a little piece of money out of it.

Q. Did he tell you how long it would take you to make that money out of it?

Mr. BUNDY.—I object to that as incompetent, irrelevant and immaterial, and asking for hearsay evidence, and as leading and suggestive.

A. Well, he said about three months, probably.

Q. Did he tell you how much you could make on the deal?

Mr. BUNDY.—That is objected to as incompetent, irrelevant and immaterial, and hearsay, and leading and suggestive.

A. He said about \$200 or \$250, or somewhere around there.

Q. Did you have the money at that time with which to purchase a timber claim?

A. I did not.

Q. Did you know at that time where you could get the money with which to purchase it?

Mr. BUNDY.—Objected to as incompetent, irrelevant and immaterial.

A. No, sir.

Q. Did you have any information as to where you could get money to make your final proof?

Mr. BUNDY.—Same objection.

A. Well, he told me I would probably get it all right, in due time.

(Testimony of John E. Hobbs.)

Q. And you finally located on one of these claims, did you? A. I did.

Q. And who located you?

A. Mr. Patrick Downs.

Q. How did you meet Mr. Patrick Downs?

A. I think I was introduced to him by Mr. Harrington.

Q. Do you know where that was—what place?

A. I do not.

Q. Where did you go to locate on this claim?

A. Up in the Basin country.

Q. Near what town or place?

A. Above Idaho City.

Q. Did you go up to Kempner's ranch?

A. I did.

Q. And who went with you?

A. A party of six, and Mr. Downs.

Q. Who were among the party?

A. I think it was six. Why, there was a Mr. Benjamin Allen, Mr. Samuel Vance, Mr. Pawley—

Q. Do you know Mr. Pawley's Christian name?

A. I do not.

Q. Were there any others?

A. There were.

Q. How many?

A. I think there were two.

Q. Do you know who arranged for this party?

A. I think Mr. Downs did.

Q. Where did the party start from?

A. Boise.

Q. What part of Boise?

(Testimony of John E. Hobbs.)

A. I don't know what part the party started from.

Q. Where did they meet you?

A. At the Half-way House.

Q. You were at the Half-way House?

A. After they were.

Q. Did they wait at the Half-way House for you?

A. They stayed there all night.

Q. Did you all go in one party?

A. Mr. Vance and myself went about three o'clock. The others left about noon, I believe.

Q. How far from Kempner's ranch did you go to view this land?

A. We went down Crooked Creek between two and three miles, possibly four.

Q. Did you drive there, or did you walk from Kempner's? A. We walked.

Q. How long did it take you to walk over there?

A. Why, possibly an hour.

Q. Did you have any arrangement as to what you were to pay Mr. Downs for locating you?

A. I did.

Q. How much were you to pay him?

A. \$25.

Q. Did you pay him there, at that time?

A. No.

Q. Do you know when you did pay him?

A. It was later.

Q. How much later?

A. I think after I filed.

Q. Do you know how long after you filed you paid

(Testimony of John E. Hobbs.)

this, and how you paid it?

A. I paid a part, and I think the rest came out when I sold my land.

Q. When you went out to view this land with Mr. Downs did he show you a claim and say, "This is the claim for you," and give you a description of it, or what happened?

A. He showed us the section corner, and that was marked, and gave us a description of our land.

Q. And did he tell you what to do with that description? A. I think he did.

Q. What did he tell you to do?

A. I think he told us to use it on final proof.

Q. Did he say anything to you about getting your papers prepared to file in the land office?

A. Not that I remember of.

Q. When Mr. Downs showed you the corners of this land, did you know whether that was the land that he was giving you the description to or not?

A. I didn't think it was.

Q. What made you think it wasn't?

A. Well, from the talk in the party, I judged it was farther along.

Q. Do you know how much farther the claim you located on was from where you were?

A. I have found out since.

Q. How far was it?

Mr. BUNDY.—I object to that, unless you ask him how he found out.

Q. How did you find out, Mr. Hobbs?

A. By looking at the plot.

(Testimony of John E. Hobbs.)

Q. How far away from where you were is the claim?

A. I think it is about nine or ten miles.

Q. Did Mr. Downs say anything about that?

A. I think he said the claims were over the hill from where we were.

Q. And you didn't go over there?

A. We did not.

Q. I showed you here, a few minutes ago, the sworn statement and the non-mineral affidavit. I will ask you who prepared those papers for you.

A. I don't remember.

Q. Do you remember where you got them?

A. I do not.

Q. Did you know Mr. John Kinkaid at that time?

A. I did.

Q. Were you in his office before you filed these papers?

A. No, I was only there once that I remember of.

Q. Do you remember whether you first saw these papers in the land office, or whether you first saw them in Mr. Kinkaid's office?

A. I couldn't say for sure.

Q. Who went to the land office with you?

A. Mr. Vance.

Q. Anyone else?

A. Not that I remember of.

Q. And you filed those two papers, that is, the sworn statement and non-mineral affidavit, and did you pay any money in the land office at that time?

A. I did.

(Testimony of John E. Hobbs.)

Q. How much? A. \$7.50.

Q. Was that your own money? A. It was.

Q. Do you know Mr. John I. Wells, who is sitting here in the room? A. I do.

Q. When did you meet him?

A. Why, in 1902 or '03, somewhere in there.

Q. Did you ever have any talk with Mr. Wells about taking up a claim, or with reference to this claim that you did take up? A. I did.

Q. When was that?

A. I think it was after I filed on the claim.

Q. Did you meet him casually, or did you go to see him, or did he come to see you?

A. I couldn't say for sure.

Q. What is your best recollection?

A. Well, I know we met quite a little; we was all around town here.

Q. Did he say anything to you about this claim?

A. No, not right after I took it up.

Q. How did you know when the time came for you to make your final proof?

A. I think Mr. Wells asked me if I wasn't to prove up a certain day.

Q. Do you remember whether that was the first time you had spoken to him about this claim?

A. I don't remember.

Q. And did you tell him that you were going to prove up, or what did you tell him?

A. I told him I intended to prove up, yes.

Q. Was any thing said then about the money with which to prove up?

(Testimony of John E. Hobbs.)

A. Not that I remember of.

Q. Well, when did you see Mr. Wells again?

A. Well, I think it was the day before I proved up.

Q. Where did you see him then?

A. He came in where I was working.

Q. Where was that?

A. On Tenth street.

Q. Did you have an office there?

A. I did.

Q. Did you ask him to come there; had you sent for him? A. Not that I remember of.

Q. What did he say to you then?

A. He said, "Do you prove up to-morrow?" And I says, "Yes."

Q. What happened then?

A. He handed me some money.

Q. What did he say when he handed you the money? A. "You know what that is for."

Q. How much money was it?

A. I think it was \$405—something like that.

Q. Did you give him a note for it?

A. Not that I remember of.

Q. Did you ever pay him any interest on it?

A. No.

Q. Did he say anything to you about where you should say you got that money when you went to the land office?

A. I was to give them to understand it was my own.

Q. Did Mr. Wells say anything to you about that?

(Testimony of John E. Hobbs.)

A. He said I was to say it was mine.

Q. And they gave you a receipt at the land office when you paid that money in at the land office? You paid that money in at the land office?

A. Yes, sir.

Q. And they gave you a receipt for it?

A. They did.

Q. What did you do with that receipt? Did you keep it, or did you deliver it to somebody?

A. I don't remember.

Q. When did you see Mr. Wells next, if you saw him at all?

A. I seen him several times, a week or two or three weeks afterwards.

Q. That was the John I. Wells who is sitting here? A. It was.

Q. Where did you see him then?

A. I seen him around on the street, different times.

Q. Did you have a talk with him?

A. In a way, yes.

Q. Did he say anything to you about this claim?

A. Yes.

Q. What did he say?

A. He wanted to know when I was going to transfer it.

Q. And what did you tell him?

A. I told him I thought I would in a little while.

Q. What did he do then?

A. Why, I think we waited about two or three weeks, and the transfer was made.

(Testimony of John E. Hobbs.)

Q. Where did you go to make the transfer?

A. Mr. Pritchard's office.

Q. Did Mr. Wells go with you?

A. He did.

Q. Had you ever talked to Mr. Pritchard about this at that time? A. Not that I remember of.

Q. This deed that I have shown you and that you identified—was that the deed you signed at that time?

A. I suppose it is. It is my signature there.

Q. Did you ever sign any other deed at Mr. Pritchard's office?

A. Not that I know of.

Q. Did you ever make another deed for this property, that you know of?

A. No, sir, not that I remember.

Q. Did they make the deed out while you were there, or was it already there?

A. I think it was already there.

Q. And you signed the deed? A. I did.

Q. Did you meet Mr. Pritchard at that time? Did he take your acknowledgment, as you remember, as notary public? A. I think he did.

Q. Was there any money paid you at that time?

A. There was.

Q. How much?

A. Between \$200 and \$230, I think.

Q. And was that the occasion that they kept out the money to pay the balance of the locating fee?

A. I don't quite understand the question.

Q. You said some time before that you paid part

(Testimony of John E. Hobbs.)

of the locating fee and the balance was taken out when you sold, and I asked you if it was that occasion that they kept out the balance?

A. It was.

Q. Did you pay for the team to go to Kemper's ranch, your part of it? A. I did.

Q. Do you know when you paid that?

A. I think I paid that a few days after returning from the ranch.

Q. This whole matter turned out just as you expected, didn't it?

Mr. BUNDY,—I object to what he expected as incompetent, irrelevant and immaterial.

A. The taking up of the claim?

Q. And turning it over and getting the \$250.

A. That was the inference I was given when I took the claim.

Q. Was anything said about what you were to sell this timber claim for when you were in Mr. Kin-kaid's office?

A. Not that I remember of, no.

Q. The whole transaction was, that you signed the deed and took what they gave you?

A. That was it.

Mr. GORDON.—We offer in evidence timber and stone land sworn statement, which has been identified, dated August 10, 1903; notice for publication of the same date; also the non-mineral affidavit, identified by Mr. Hobbs, of the same date; his testimony given on final proof, November 10, 1903; and the cross-examination identified by Mr. Hobbs,

(Testimony of John E. Hobbs.)

attached; the testimony of the other witnesses on final proof; the register's and receiver's certificates, dated November 10, 1903; and the deed, dated December 17, 1903, made by John E. Hobbs to Horace S. Rand, consideration \$900, which has been heretofore identified by Mr. Hobbs; and certified copy of the patent, dated September 9, 1904; all to the southwest quarter of section 29, township 6 north of range 8 east, Boise Meridian.

(Marked Plaintiff's Exhibit No. 81A to 81I, inclusive.)

Q. Mr. Hobbs, you didn't know Mr. Horace S. Rand, did you? A. I did not.

Q. Did you read the deed over that you signed?

A. No, sir.

Cross-examination.

(By Mr. BUNDY.)

Q. Mr. Hobbs, the first man that spoke to you about this, you say was a man by the name of Harrington? A. Yes, sir.

Q. What was his first name?

A. I don't remember for certain.

Q. What were his initials?

A. I think it was E. A.

Q. What was his name, do you know?

A. I think it was Earl.

Q. What was his business? A. Mining.

Q. Laborer? A. Mining.

Q. As a laborer, or mine owner, or what?

A. He worked around mines.

Q. And you say that you got from Mr. Harrington-

(Testimony of John E. Hobbs.)

ton some kind of an inference as to what you might do? A. I did.

Q. Did you get that inference from anybody other than Mr. Harrington?

A. It was the common talk of the town.

Q. But you had no such talk as that with Mr. Steunenberg?

A. I never knew the gentleman.

Q. Nor Mr. Kinkaid? A. I did not.

Q. Or Mr. Downs?

A. After having an introduction to him.

Q. Did you have any talk with Mr. Downs about what you were to do with this land, except to enter it?

A. Why, he gave me the idea that it could be sold if I took it up.

Q. That there would be a chance to sell it?

A. Yes, sir.

Q. Did you have any talk with Mr. Wells prior to the time you filed?

A. Not that I remember of.

Q. Or Mr. Kinkaid, prior to filing?

A. No, sir.

Q. Or Mr. Pritchard?

A. I think not.

Q. Or the Barber Lumber Company or any of its agents? A. I don't think so.

Q. Or with Mr. Barber or Mr. Moon?

A. No, sir.

Q. Or with Mr. William Sweet? A. No.

Q. So that the inference which you have testi-

(Testimony of John E. Hobbs.)

fied about is one that you gained, you say, from talks with Mr. Harrington, and general talk about town?

A. Yes.

Q. After Mr. Harrington had made this suggestion to you and you had concluded to avail yourself of your rights as a citizen, who did you first speak to about it?

A. Why, I think I was made acquainted with Mr. Downs.

Q. Introduced to him down here in Boise?

A. I was.

Q. You hadn't known Mr. Downs before that?

A. I don't think I did.

Q. Do you remember who introduced you to him?

A. I do not.

Q. Did you ask Mr. Downs if there were any claims up there that he could locate you on, or something to that effect?

A. To that effect, yes.

Q. What did he tell you?

A. He said there were some.

Q. Did he tell you what it would cost you, at that time, for locating you?

A. I couldn't say.

Q. Did he tell you before you went up there what it would cost you for a locating fee?

A. I think he did.

Q. Did he tell you that the fee would be \$25?

A. He did.

Q. Did you promise and agree to pay him that amount for it?

(Testimony of John E. Hobbs.)

A. I didn't object to the amount.

Q. So that the understanding was that you were to pay \$25. That was, as I understand, the universal price they were charging?

A. I did.

Q. After you had this talk with Mr. Downs and he told you there was some claims, how did you determine what day to go up?

A. I think he arranged the party.

Q. He told you there was a party going up on a certain day and you could go up with them?

A. Yes, sir.

Q. You and Mr. Vance took one team?

A. Yes, sir.

Q. And you paid your share of that?

A. Yes, sir.

Q. And the other party took another team?

A. Yes, sir.

Q. And you got together at Kempner's ranch, you and Vance and the other party?

A. We all were at Kempner's ranch.

Q. That is where you got together?

A. We were all there, yes.

Q. Did you stay over night there?

A. Yes, sir, we did.

Q. And the next day you went out to the timber?

A. Yes.

Q. And you left your teams there and walked out?

A. We walked, yes.

Q. You say Mr. Downs took you to a certain corner and told you that the claim he had in mind

(Testimony of John E. Hobbs.)

for you was over the hill?

A. Somewhere over there, yes.

Q. Did he tell you just where it was, over the hill?

A. Nothing, only from the plot he gave me.

Q. And from the plot he gave you, you could tell the location, where it was, with reference to the corner he had shown you?

A. I believe I could, yes.

Q. Did he show the other gentlemen some claims too, or or do you know about that? I mean some corners.

A. He showed us all one corner.

Q. He didn't show anybody else any other corner? A. Not that I seen.

Q. So, after you had been shown this corner, you came back to Kempner's ranch, did you, the whole bunch? A. That day, yes.

Q. And stayed there that night?

A. We started for Idaho City.

Q. That night? A. Yes.

Q. Did Downs come back to Idaho City with you?

A. He did.

Q. And stayed all night at Idaho City?

A. We came on through.

Q. Did Downs come down with you?

A. He did.

Q. The whole bunch came down together?

A. Just Sam Vance, myself and Downs.

Q. Now, he had given you a plat, or some numbers, had he? A. Township plot, yes.

(Testimony of John E. Hobbs.)

Q. And the particular piece you were supposed to enter was checked off on it? A. It was.

Q. What time did you get to Boise that night?

A. I think about three o'clock in the morning.

Q. And what did you do—nothing, I suppose, that night but go to bed?

A. Went to bed.

Q. The next day did you go to the land office?

A. I did.

Q. You seem to have signed a sworn statement here, which it is necessary for all timber and stone claimants to file, which has been shown you, dated August 10, 1903. You say you don't remember who made that out for you?

A. I don't know who made it out.

Q. Do you remember where you first saw it?

A. No, sir.

Q. But in some way you got it and took it to the land office? A. Yes, sir.

Q. And made a filing? A. I did.

Q. And paid a land office fee?

A. Yes, sir.

Q. Where did you get the \$7.50? Was that your own money, or did you borrow that?

A. It was my own money.

Q. And after you made this filing, the next day, or soon after that, you saw Pat Downs and paid him a part of the location fee? A. Yes, sir.

Q. About how long after did you pay him?

A. I couldn't say.

Q. About a week, or two or three days, or when?

(Testimony of John E. Hobbs.)

A. I don't remember.

Q. Was it before final proof?

A. I think it was.

Q. How much did you pay him?

A. I couldn't say.

Q. Any idea whether it was \$50 or \$10?

A. Probably in the neighborhood of \$10.

Q. Do you remember where you paid it?

A. I do not.

Q. Now, up to the time that you filed this first paper, your original application to purchase, had you had any talk with Wells or Kinkaid with reference to this property?

A. Nothing only that I was to prove up a certain day.

Q. You don't understand. I mean, at the time you filed this first paper in the land office, your original application to purchase, after you came back from the timber, that time you testified on direct examination that you had not had any talk with Wells. That is a fact, is it not?

A. Nothing only in a business way. I hadn't said anything to him about this timber that I remember of.

Q. So that at the time you filed your original papers, you had had no conversation with Wells about this timber claim?

A. Not that I remember of.

Q. And you had had no talk with Kinkaid with reference to this? A. No, sir.

Q. And you had had no talk with Pritchard with

(Testimony of John E. Hobbs.)

reference to this? A. I think not.

Q. And you had no talk with Downs except with reference to locating you?

A. That is all, I think.

Q. Mr. Downs had, at that time, made no proposition to buy it? Mr. Downs at this time hadn't offered to buy it? A. I think not.

Q. Had you offered to sell it to him?

A. I think not.

Q. Had there been any conversation about selling it at all, at the time you filed this first paper?

A. Not that I remember of.

Q. I think you are right about that, Mr. Hobbs. I see in this original statement, you testified, under oath, as follows: "I have not, directly or indirectly, made any agreement or contract, or in any way or manner, with any person or persons whomsoever, by which the title I may acquire from the Government of the United States may inure in whole or in part to the benefit of any person except myself." That is the statement you signed on August 10, 1903, when you made your first filing in the land office, and it was absolutely true at that time, was it not?

A. I hadn't found a buyer, or exactly anyone, but I knew I could sell it in due time.

Q. Anybody could sell timber, and that is what you mean, that you knew there would be a buyer for it when you got ready to sell. Is that right?

A. I knew there would be a buyer after I proved up.

(Testimony of John E. Hobbs.)

Q. Going back to this statement here, made on the day of your original purchase, "That I have not, directly or indirectly, made any agreement or contract, or in any way or manner, with any person or persons whomsoever, by which the title I may acquire from the Government of the United States may inure in whole or in part to the benefit of any person except myself." That was true at the time you filed it, wasn't it? You had made no such agreement at that time, had you?

A. I had made no agreement or contract, no.

Q. With anybody? A. No.

Q. You hadn't had any talk with anybody about selling it at that time, had you?

A. Well, no more than it could be sold.

Q. I understand you generally understood that there was a market for all the claims that you could get. You understood that, didn't you?

A. I understood that I could sell it after I proved up, yes.

Q. You understood that there was a market for it?

A. I understood it could be sold after I proved up, yes.

Q. Had you made any agreement to sell it or transfer it to any person at the time you made this sworn statement on August 10, 1903?

A. I knew it could be sold, yes, when I made that entry.

Q. On August 10, 1903, had you made any agreement with any person, firm, or corporation, by which

(Testimony of John E. Hobbs.)

the title you might acquire was to be transferred to them?

A. I had no agreement in writing, or anything.

Q. Had you any verbal agreement, by which you was to turn this over to any person, firm, or corporation when you acquired title to it?

A. No, but the natural inference was that I could sell it, all the time.

Q. Your natural inference was that you could sell it, and that was what you entered it for?

A. Yes, sir, I took it so that I could sell it.

Q. You took it so that when you got title you could sell it at a profit?

A. If I couldn't sell it at a profit I wouldn't have taken it.

Q. And that was the sole object you had, was to make a profit for yourself?

A. I could make a piece of money, yes.

Q. And by a piece of money, you mean, sell it for more than it cost you?

A. Yes, more than it cost me.

Q. And that was the object you had in going to the land office, was to get this land and sell it at a profit?

A. Yes, sir.

Q. That part is understood between you and I, Mr. Hobbs. Everybody knew there was a market, but what I want to get at is whether you had any agreement, in writing or verbal, not at the time you proved up on it, but at the time you made this first application, by which you had promised to turn that title over to anybody?

(Testimony of John E. Hobbs.)

A. At the time I filed on it, the natural inference was that I could sell it.

Q. You have told us that a great many times. Will you answer this question. At the time you filed on it, had you made any agreement, with any person, to turn that title over to them when you got it?

A. I don't know as I had made any agreement.

Q. You know whether you had or not?

A. I don't remember any agreement, no.

Q. Had anybody asked you at that time to transfer it to anybody? A. Not directly, no.

Q. Had anybody asked you at that time, indirectly, to transfer it to anybody, and, if so, who?

A. No more than the common talk around that you could sell your claim.

Q. Did you know who you was going to sell it to at the time you filed on it? A. I did not.

Q. Did you enter this timber and stone claim, Mr. Hobbs, for the benefit of the Barber Lumber Company?

A. I didn't know the Barber Lumber Company then.

Q. Did you enter that timber and stone claim for the benefit of John I. Wells, as his hireling?

A. Not that I knew of.

Q. Did you enter it for the benefit of anybody other than yourself?

A. Only for what I could make out of it.

Q. Did you have any other object in entering it, except to get title to it yourself, and sell it at a profit? A. I think not.

(Testimony of John E. Hobbs.)

Q. Now, it is charged in this complaint, by the Government, in this action we are trying, that prior to the time you entered this timber and stone claim you entered into an agreement with the Barber Lumber Company and the other defendants in this action, by which agreement you undertook and agreed to enter a piece of land for them, and that you promised and undertook to go before the land office and swear falsely to get title, and that as soon as you got title you would transfer it over to them. Did you make any such agreement as that before you filed on this land?

A. I didn't agree to sell it to no one, no.

Q. Mr. Stenographer, please read the question.
(Question read by stenographer.)

A. I didn't know the Barber Lumber Company.

Q. Then you didn't make any such agreement, did you?

A. Not with the Barber Lumber Company.

Q. Did you make any such agreement with anybody else?

A. Only that I understood it could be sold when I took it.

Q. I want to know, not what you knew about selling it. Everybody knew you could sell land in this country at that time. I want to know whether or not you entered into an agreement before you filed upon this land, by which you had undertaken to transfer the title when you got it to anybody?

A. Not that I remember of, no.

Q. Mr. Hobbs, if you had entered into such an

(Testimony of John E. Hobbs.)

agreement as that you would have remembered it?

A. I don't remember of any; I don't think I did.

Q. Have you been interrogated in the back room, or some other room, in this building by some agents of some kind of the Government?

A. I have been asked some questions, yes.

Q. When? A. To-day and yesterday.

Q. Any time before that? A. No.

Q. Yesterday was your first interview?

A. It was.

Q. Were you told by the agents of the Government that interviewed you that you had no right to sell this land or get money to prove up on it with from John I. Wells before final proof was made?

A. I think not; they only asked me some questions.

Q. Didn't they tell you that if you had done that you had done a wrong thing?

A. They didn't tell me whether it was wrong or otherwise.

Q. Did they give you to understand in that conversation in there that if you had done that you had made yourself liable?

A. They didn't give me to understand that I had or hadn't.

Q. Did they make any suggestions to you as to what would be done with you if you did or did not testify as they required?

A. Nothing, only I supposed it was outlawed, that was all.

Q. That is, they told you that the claim against

(Testimony of John E. Hobbs.)

you for perjury had outlawed?

Mr. KEIGWIN.—I object to the suggestion in that question. The witness has not said that he was told that the prosecution was outlawed. I will put the question to him again and ask him what he said.

Mr. BUNDY.—Q. They told you it was outlawed, as I understand?

A. That is what I understood.

Q. You understood from them that any claim against you for perjury was outlawed, and they couldn't prosecute you for perjury?

A. That is what I understood.

Q. And after telling you that, and giving you the impression that you had committed perjury—

Mr. KEIGWIN.—I object to the question on the ground that it suggests what the witness has not said—that he had been told that he had committed perjury. The witness has not testified that anybody had told him he had committed perjury.

Mr. BUNDY.—Q. Mr. Hobbs, what crime, if any, was it that they told you had been outlawed?

A. I expect it was getting the money—I expect it was.

Q. What did they say to you—what did this agent of the Government tell you had outlawed?

A. That getting the money and so on, and the act of taking this land, and everything, was outlawed.

Q. And what more did he say?

A. I believe that was all.

Q. He must have said something more to you, Mr. Hobbs. He didn't just say it was outlawed and

(Testimony of John E. Hobbs.)

quit?

A. It was outlawed and they couldn't handle the entrymen for it.

Q. They couldn't handle the entrymen?

A. Yes.

Q. What else? A. I think that was all.

Q. What did he tell you that for? What did he say was the object?

A. I think because I asked him.

Q. What did you ask him?

A. What they was going to do with the entrymen.

Q. And what did they say?

A. Just what I told you.

Q. That it had outlawed? A. Yes, sir.

Q. And what you understood was outlawed was the fact of your testifying falsely before the land office? A. I suppose it was.

Q. And making a false entry there?

A. So I understood.

Q. And they gave you to understand that you had made a false entry?

A. I supposed I had, or I wouldn't have been charged.

Q. Did they give you to understand that your false entry consisted in selling out before final proof?

A. I don't know.

Q. Do you think you made a false entry?

A. I don't know.

Q. What do you think was wrong with your entry? A. I couldn't say.

Q. Do you think there was anything wrong?

(Testimony of John E. Hobbs.)

A. I don't know.

Q. Well, these Government officers that had you in this room yesterday and to-day took the position with you, and gave you to understand, that you had violated the law in some way in making this entry, did they not?

A. That is what I understand, yes.

Q. And your understanding was that you had violated the law because you had sold out after you had made your filing and before you made your final proof?

A. I suppose that was it.

Q. The fact is, Mr. Hobbs, and I gather from your evidence, that at the time you made this filing, original application to purchase, you had had no talk with Mr. Wells about furnishing you the money to prove up with, had you?

A. Not that I remember of.

Q. And you never did have any talk with him about it until, I think you said, a few days before final proof.

A. I think that is right.

Q. So that up to a few days before final proof you hadn't sold out any right, title, or interest you had in the claim at all?

A. I don't think I had.

Q. And when Mr. Wells came around and gave you this money, it was your understanding at that time that you had sold out your right to him, and that he would pay you enough down to prove up with and would pay you the balance after you transferred title.

A. It was understood that the money was to prove

(Testimony of John E. Hobbs.)

up with.

Q. That it was part payment on the claim, or did you suppose that you had sold out?

A. I supposed I would make the transfer when I got the balance.

Q. You understood, did you not, when Mr. Wells gave you this \$400 that you had practically sold your claim?

A. I supposed I had, unless I reimbursed him.

Q. You would either have to repay the money he had loaned you to prove up, or else, sell to him and get the balance that was coming to you?

A. I suppose so.

Q. But up to that time, that is, up to the time Wells first spoke to you about the money to prove up, you never had contracted away your right to this timber to any person, had you?

A. Not that I remember of. I didn't have any contract, no.

Q. Either oral or written?

A. I don't think so.

Q. Either express or implied, with anybody?

A. Nothing, only what was the talk around town here.

Q. The talk around town was simply to the effect that these fellows were buying timber claims, was it not, and you knew you could sell it?

A. People on the market for them, yes.

Q. People on the market isn't the same as an agreement to sell. You don't understand that, do you?

A. I don't suppose it was.

(Testimony of John E. Hobbs.)

Q. So that up to the time you made your original application to buy this land you didn't know who you was going to sell it to, did you?

A. I didn't know who was going to buy it, no.

Q. And at the time you paid the \$7.50 in the land office, and paid for the rig, and paid part of Pat Downs' locating fee, you had made no arrangement to sell it?

A. No, only it was understood that I could sell it.

Q. Yes, but you had never talked with anyone about buying, and nobody had talked to you about selling?

A. It was talked around that they could be sold.

Q. I am trying to find out from you if, up to that time, you had sold this land. You know whether you had or not?

A. I don't suppose I had sold it.

Q. Don't you know you hadn't sold it?

A. I don't know what the law would say about it.

Q. Had you sold it—outside of any law?

A. I had made no deed prior to proving up, no.

Q. I want you to get your mind on the day you first went to the land office and made this application to purchase, and paid \$7.50 in the land office. Now, you know what I am talking about, don't you? When you filed your first papers. Up to that time, had you agreed to sell that to anybody?

A. Up to filing that paper?

Q. Yes.

A. No, we hadn't agreed to sell it to anyone that

(Testimony of John E. Hobbs.)

I know of.

Q. Up to the time you paid Pat Downs part of the location fee had you agreed to sell it to anybody?

A. I had been told that I could possibly sell it all right.

Q. Had you agreed to sell it to anybody up to that time?

A. I don't remember that I had.

Q. Had you offered it for sale to anybody at that time?

A. I wasn't hunting a buyer, no.

Q. Had you offered it for sale to anybody at that time?

A. I don't remember that I had.

Q. Had anybody offered to buy it from you at that time? I am speaking now of the time that you paid Pat Downs part of his location fee.

A. I don't think there was anyone said that they would buy it; they said I could sell it all right.

Q. Who told you that?

A. Downs said I would be all right hanging on to it, and prove up, and I would be all right.

Q. When did he tell you that?

A. I don't remember whether it was the time I paid him or some other time.

Q. Did he tell you who you could sell it to?

A. No, sir.

Q. He simply told you to hang on to it, and you could sell it?

A. That I could probably sell it.

Q. Was that talk you had with Downs and the talk you had with Harrington the only conversations you had with anybody that led you to think that you

(Testimony of John E. Hobbs.)

could sell it?

A. I don't remember who I talked to; it was all over town at that time.

Q. What was all over town at that time?

A. About taking up timber claims and selling them.

Q. And you have got it in your mind, haven't you, Mr. Hobbs, that that was a violation of the law; that is your opinion, isn't it?

A. I don't know; I am no lawyer.

Q. Is that what these Government officers told you?

A. That it was against the law?

Q. To take up a timber claim and sell it?

A. I know nothing only what those papers say there.

Q. What papers?

A. The entry papers there.

Q. I mean these special agents that talked to you in the back room, did they convey the idea that that was illegal, to enter timber claims and sell them?

A. I don't remember that I asked them, or that anything was said about it.

Q. You found out, shortly after you had deeded your property, that a good many of the other entrymen had got a larger price for their claims than you did, didn't you?

A. I had heard that some of them sold for more, yes.

Q. And you have been doing considerable complaining around that you didn't get as much as you ought to out of your claim, haven't you?

(Testimony of John E. Hobbs.)

A. I don't know as I kicked.

Q. Mr. Hobbs, haven't you kicked to a considerable number of people here in town that these fellows didn't pay you as much as the rest of them?

A. I might have said I didn't get what it was worth.

Q. You felt pretty sore about it, didn't you?

A. I don't know whether I was or not.

Q. Mr. Hobbs, haven't you said in this town repeatedly that you would make it pretty hot for these people?

A. I don't remember that I have.

Q. Will you say that you didn't?

A. I say I don't remember that I ever said that.

Q. That is the best answer you can make to that?

A. Yes.

Q. When you went to the land office did you intend to tell the truth, or did you intend to testify falsely?

A. I testified to just what they asked me.

Q. Truly or falsely, to the best of your knowledge?

A. I don't remember what the questions were; I answered them just as they were asked.

Q. Mr. Hobbs, when you went to the land office did you intend to testify to the truth, or did you intend to testify to what you know to be false?

A. I don't know as I wanted to lie.

Q. Did you tell the truth then?

A. Of course.

Q. I think you did, too, Mr. Hobbs. I don't think there is any intention to lie here, except that

(Testimony of John E. Hobbs.)

you have got the impression that you have violated the law, which isn't true. When you made your first filing in the land office you intended to testify truly, did you not? A. Yes, I did.

Q. And the papers you filed there were true to the best of your knowledge and belief?

A. As far as I remember, yes.

Q. Among other things, you said what I have read to you. You testified at that time, and swore to it, that you had not entered into any agreement or contract, in any way or manner, with any person, by which title you might acquire from the Government of the United States would inure in whole or in part to the benefit of any person except yourself. That was true at that time, was it not, absolutely?

A. I had made no agreement.

Q. That statement was true?

A. As far as I know.

Q. As far as you knew then and as far as you know now?

A. As far as I knew then and as far as I know now.

Q. That is a plain, explicit statement, signed by you, to the effect that on the 10th day of August, 1903, you had not entered into any agreement.

A. I had no agreement, no.

Q. Then that statement is true?

A. I think it is.

Q. Undoubtedly so. You seem to be more afraid of your own evidence than anyone else. Now, when you came to make final proof, which was on the 10th

(Testimony of John E. Hobbs.)

day of November, 1903, the fellows at the land office asked you a lot of questions which they ought not to have asked you, but they did, and you answered them, and it was your intention at that time to tell the truth, was it not? A. It was.

Q. One of the questions which was asked you at that time was this: "Have you sold or transferred your claim to this land since making your sworn statement, or have you directly or indirectly made any agreement or contract, in any way or manner, with any person whomsoever, by which the title which you may acquire from the Government of the United States may inure, in whole or in part, to the benefit of any person except yourself?" And your answer to that was "No." That was true, as you understood it, at that time, was it? And is true as you understand it now? A. I think it is.

Q. The next question is: "Do you make this entry in good faith for the appropriation of the land exclusively to your own use and not for the use or benefit of any other person?" And you answered that, "I do." That was true at the time, was it not?

A. I suppose it was.

Q. And is true now, is it not?

A. As far as I know.

Q. And this next question: "Has any other person than yourself, or has any firm, corporation, or association any interest in the entry you are now making, or in the land, or in the timber thereon?" And you answered that, "No." That was true at the time and is true now, is it not?

(Testimony of John E. Hobbs.)

A. I suppose it is.

Q. Don't you know that it is?

A. Nothing only that I sold the claim. I don't even remember who I sold it to.

Q. This was at the time you were making final proof. Did you sell before you made final proof or afterwards?

A. I think I sold afterwards; that is what the deed says there.

Q. The time you answered this question was at the time you were making final proof, and at that time you said that you had not sold it, and had not sold any interest in it, and that was true at that time, was it not? A. Yes.

Mr. BUNDY.—It is a quarter past twelve, and I am not through with this witness.

The EXAMINER.—Then we would better adjourn until two o'clock.

Mr. BUNDY.—I want to examine him further at two o'clock.

Mr. KEIGWIN.—I will ask the Examiner to caution this witness not to speak to anyone about this matter between now and two o'clock.

The EXAMINER.—It will not be proper for you to have any conversation with anybody with reference to your testimony before we meet again here, Mr. Hobbs; that includes everybody.

Mr. BUNDY.—And also caution him not to talk to these Government agents back here.

Mr. KEIGWIN.—Mr. Examiner, can the record show that our request was that the witness should be

(Testimony of John E. Hobbs.)

cautioned not to talk with anybody?

The EXAMINER.—Certainly.

Mr. KEIGWIN.—And that this interpolation comes from the other side?

The EXAMINER.—Certainly.

(Two o'clock, P. M., Tuesday, February 16, 1909.

(Mr. HOBBS resuming the witness stand.)

Mr. BUNDY.—Q. Where did you come from just now?

A. I came out of Langley's repair shop.

Q. You haven't been in the back room in here?

A. No, sir.

Q. What day of the week was it that you went up to look at this land?

A. I don't remember.

Q. Why didn't you go with the party, instead of waiting until three o'clock in the afternoon?

A. I had some business to tend to.

Q. What was your business? A. Assaying.

Q. Let's see if I can't refresh your recollection a little. You were quite busy at the time, had a good deal of business on hand? A. I did.

Q. Wasn't it very important that you got back here by Monday morning, and that you went up, leaving here, as you said, on Saturday afternoon, you left then and got back very late Sunday night?

A. I know it was very late in the night, but I don't know what day.

Q. Don't you know that it was on Sunday you was on the land? A. I don't remember.

Q. You don't remember that it was Saturday

(Testimony of John E. Hobbs.)

afternoon that you left here then? Don't you remember that you were very anxious to get back?

A. I know I was in a hurry to get back, but I don't recall what day it was.

Q. Don't you recall this fact, that you objected to going so far as Mr. Downs desired to take you, and that you desired to get back quicker on account of the urgency of your business back here?

A. No, sir, I do not recall that.

Q. Mr. Harrington told you that he had taken up a claim, did he not? A. He did.

Q. And that he had sold it? A. He did.

Q. And I presume told you what he had sold it for, and what he got out of it, and so on?

A. He did.

Q. Now, you knew John I. Wells quite well, did you not, for some time prior to the time you filed on your timber claim?

A. I had done work for him, yes.

Q. Mr. Wells was in the mining business at that time? A. I think he was.

Q. And you, as assayer, did a good deal of business for him, did you not? A. I did.

Q. And were doing business for him in that capacity between the time you filed on this timber claim and up to the time you made final proof?

A. I done a little work for him, yes.

Q. He was in your office to see you, as an assayer, a number of times during that interval, was he not?

A. He was in there, yes, off and on.

Q. Now, don't you recollect, on reflection, Mr.

(Testimony of John E. Hobbs.)

Hobbs, that Mr. Wells and you had a number of interviews in your office with reference to proving up on this timber claim?

A. Well, we might; I don't remember.

Q. I mean prior to the time he handed you over this money.

A. He might have made remarks about it that I don't call to mind.

Q. Don't you recall that at one of those interviews, after you had filed, and some time before you made final proof, that you stated to Mr. Wells that you wanted to make final proof, but didn't have the means to do it with?

A. I might have; I don't remember about it.

Q. See if you can't refresh your recollection, that you had an understanding with Mr. Wells some little time before you proved up that you could get the money from him for that purpose, so that the time he came and handed the money to you wasn't the first talk you had with him about it.

A. That is the first one I remember about right now.

Q. You wouldn't say that you hadn't had one before that?

A. I say that is the only one I call to mind.

Q. Mr. Hobbs. I think you said that you didn't see Mr. Kinkaid in this transaction.

A. I don't think I did.

Q. Do you know whether the deed you signed was in blank, or whether it was filled out, or did you read it?

A. I didn't read it.

(Testimony of John E. Hobbs.)

Q. So you didn't know?

A. I couldn't say.

Q. Mr. Hobbs, do you know any of the defendants in this action, the Barber Lumber Company or any of its agents?

A. At present?

Q. Yes, at present?

A. Personally?

Q. Personally.

A. I don't think I do.

Q. Did you ever have a business transaction with any of them relative to the entry of timber land?

A. Knowing that they were the Barber Lumber Company?

Q. Anybody that you know to be acting for the Barber Lumber Company.

A. I don't think I did.

Q. Did you ever have any business relations with James T. Barber?

A. No, sir.

Q. Or Sumner G. Moon?

A. No, sir.

Q. William Street?

A. No, sir.

Q. John Kinkaid, relative to this timber land?

A. I think not.

Q. Louis M. Pritchard, other than selling to him, as you have testified, other than the transactions at the time you sold?

A. No, sir.

Q. Patrick H. Downs, other than the work he did in locating you?

A. I think not.

Q. Albert E. Palmer?

A. No, sir.

Q. Or Horace S. Rand, other than deeding to him, as you have testified?

A. Not that I know of.

Q. Did you enter this timber and stone claim you have testified about at the request of any of the gen-

(Testimony of John E. Hobbs.)

gentlemen whose names I have read to you?

A. I think not.

Q. Did any of the gentleman whose names I have read to you procure you or induce you to make this entry?

A. Nothing more than they said I could make a piece of money out of it.

Q. Which one of the gentleman I have named said that? A. I couldn't say.

Q. Did any of them say that to you?

A. I think that was the understanding.

Q. Now, Mr. Hobbs, I didn't ask you for your understanding. Did any of them say to you what you have testified to? Did the Barber Lumber Company, James T. Barber, Sumner G. Moon, Mr. William Sweet, John Kinkaid, Louis M. Pritchard, Patrick H. Downs, Albert E. Palmer, and Horace S. Rand, or any or either of them request or induce you to make that timber and stone entry?

A. I think not.

Q. I think not either. Did you make any agreement with the gentlemen whose names I have read, or any of them, prior to the time, or at the time you made this timber and stone filing, that you would turn it over to anybody as soon as you procured title?

A. I don't think so.

Q. It is alleged in this complaint in this action we are trying, Mr. Hobbs, that you did make such an agreement with these gentlemen, that you did enter this land for their benefit, and that, in order to defraud the United States, you agreed with them that

(Testimony of John E. Hobbs.)

you would commit perjury before the land office. Did you ever make such an agreement?

A. I don't remember of it; if I did, I don't remember it.

Q. Mr. Hobbs, if you had made an agreement by which you had promised and agreed to perjure yourself, don't you think you would remember it?

A. I ought to, yes.

Q. You don't think you ever made any such agreement with these men, do you?

A. Not to my knowledge.

Q. It is alleged that you did, pursuant to that agreement, enter the timber and stone land in question for the benefit of the defendants whose names I have read. Is that true?

A. That I made entry for their benefit?

Q. Yes.

A. I don't think I had that understanding at all when I made the entry.

Q. You made it for your own benefit, didn't you, Mr. Hobbs?

A. I think I did.

Q. Now, the substance of your evidence, as I understand it, is about this: You learned from Mr. Harrington that he had made a timber and stone entry and sold it and made some money out of, and he told you of that fact? Is that a fact?

A. He did.

Q. And he was the first one that called your attention to the opportunity to make some money in that way?

A. To the best of my knowledge, yes.

(Testimony of John E. Hobbs.)

Q. That, acting upon the suggestion and information derived from Mr. Harrington, you went to Mr. Downs and asked him if he could locate you, or words to that effect?

A. I got introduced to him, yes.

Q. That you arranged with Mr. Downs to go up and be located by him, for a compensation of \$25, which you were to pay him. That is correct, is it?

A. It is.

Q. That you then went up and looked over the land, was given some numbers by Mr. Downs, and returned and went to the land office. So far, I am correct, am I not?

A. I believe that is right.

Q. That you went to the land office and paid the filing fee, which I think you said was \$7.50, and paid the expense of your trip up into the timber by yourself and for yourself. That is correct, is it not?

A. I believe it is.

Q. That some time afterwards, the date of which you don't just recollect, you paid Mr. Downs a portion of the \$25 you had promised to pay him?

A. I think that is right.

Q. And that money was paid for yourself and by yourself, and out of your own money. That is correct, is it not?

A. It was.

Q. And you filed your preliminary papers in the land office on the 10th of August, 1903, in which you truthfully stated that at the time you had not made any agreement or contract, in any way or manner, with any person or persons whomsoever, by which

(Testimony of John E. Hobbs.)

the title you might acquire from the Government of the United States would inure in whole or in part to the benefit of any person except yourself. That was true at the time you made it?

A. At that time, yes.

Q. So that up to the time, and subsequent to the time you filed your first papers, and up to the time you paid Mr. Downs a portion of his location fee, up to that time the only thing you had in your mind about selling or disposing of the land was the knowledge you had gained from general talk, and from Mr. Harrington, that there was a market for it and that it could be sold at a profit? Am I correct in that?

A. It could be sold at a profit, yes, sir.

Q. Read the question, Mr. Stenographer. (Last question read by stenographer.)

A. I believe you are.

Q. And up to that time you had had no talk with anybody by which you had promised or obligated yourself to sell it to any particular person, corporation, or firm, but you still reserved and had the right to sell it to whomsoever you desired, up to that time. Is that a correct statement of your evidence?

A. I think it is.

Q. And then, subsequent to that time, and a few days before you made your final proof, you felt that you didn't want to put any money that you had then into the purchase, if you had any, and you then made arrangements with Mr. Wells to advance to you the sum necessary to pay the land office for this land?

A. He gave me the money, yes.

(Testimony of John E. Hobbs.)

Q. For that purpose? A. Yes, sir.

Q. So that, up to that time—the best you can recall, this was a few days before final proof?

A. I think it was.

Q. So that that was the first time anybody had acquired any interest in the land you were entering, and the first time you had put yourself under any obligation to anybody with reference to who this land should go to? Is that right?

A. I believe it is.

Q. And you took the money and proved up, and after you proved up you went to Mr. Pritchard's office with Mr. Wells, made a transfer of the property to whomsoever Mr. Wells directed you to, and was paid, in addition to the amount already advanced to you, the sum of about \$230 to \$250?

A. I think that is correct.

Q. And you entered that land originally for the express purpose, as you have stated, of selling it to somebody at a price in excess of what it would cost you and thereby make some money. That was your intention all the time, wasn't it?

A. Yes, sir, I intended to make a piece of money out of it, if I could.

Q. By selling it? A. Yes, sir.

Q. You didn't understand that you were up there as anybody else's hired man, did you? You didn't understand that you was working for anybody for wages in entering the land, did you?

A. I don't know as I was drawing any salary, no.

(Testimony of John E. Hobbs.)

Q. You exercised your right by entering the land, with the expectation of selling it?

A. That was my understanding, yes.

Q. Assuming, Mr. Hobbs—I will ask you to follow my question a little closely now—assuming for the purpose of your evidence that under the law of the United States any citizen has a right to file an application for the purchase of timber and stone lands, and if he makes that application for his own use and for his own benefit, and without any agreement with any other person, he has an absolute right to sell that land, or mortgage it, or any interest in it before final proof, assuming all those things to be true, you don't think you did anything in this matter at all in violation of the law, do you?

Mr. KEIGWIN.—I object to that question as being avowedly a hypothetical question, as calling for the mere opinion of the witness, and as being utterly immaterial and irrelevant, and counsel for the complainant now state that they have not objected to this very protracted cross-examination heretofore in the interest of fairness and giving the defendants all possible opportunity, but that they now insist that the cross-examination shall terminate unless some matter not heretofore touched upon shall be suggested in the questions, and give notice of a motion to strike out any further cross-examination on the lines already followed by counsel for the defendants and to tax the costs of any further cross-examination against the defendants, as being immaterial, frivolous, and unduly protracted.

(Testimony of John E. Hobbs.)

Mr. BUNDY.—Please read the question, Mr. Stenographer. (Question read by stenographer.)

Mr. KEIGWIN.—We will ask the Examiner to direct the witness not to answer the question, on the grounds already stated.

The EXAMINER.—I think he may answer the question.

Mr. KEIGWIN.—We will except to that ruling of the Examiner, and ask that the matter be certified to the Court.

The EXAMINER.—Of course, gentlemen, I am not determining the relevancy of this question, or the competency of the question, at all. I am simply saying that, notwithstanding the objection, the witness may answer the question, and then it goes up to the court, and is for the Court to say whether it is a proper question or not.

Mr. BUNDY.—This question is not asked the witness for the purpose of examining him as an expert on the law, but is asked him for the purpose of getting an expression of what was in the witness' mind, and as evidencing the witness' intent, and the question is prompted by the evidence already in, from which it appears that in the examination of the witness by people purporting to be officers of the Government, certain statements have been made to him of certain crimes having outlawed against him.

Mr. KEIGWIN.—We recognize the limitations of the Examiner's power in respect of ruling upon the competency and materiality of evidence proposed to be adduced. Our objection and our request to the

(Testimony of John E. Hobbs.)

Examiner are predicated upon our understanding that it is within the scope of the Examiner's authority to put a stop to an examination when it has passed beyond reasonable limits, and more especially when it has developed so palpably a frivolous character as that shown in the cross-examination of this witness. In view of the statement made by Mr. Bundy, we add the further objection to the question, and submit it on the further ground for stopping this examination and relieving the witness from answering this question, that Mr. Bundy's statement embodies an incorrect statement of the testimony of the witness to which that statement refers, in this, that the witness has not stated, and that it is not true, that any person professing to represent the Government, has stated to this witness that he, the witness, has committed any crime at all.

Mr. BUNDY.—Read the question, please. (Question read by stenographer, as follows:) “Assuming, Mr. Hobbs—I will ask you to follow my question a little closely now—assuming for the purpose of your evidence that under the law of the United States any citizen has a right to file an application for the purchase of timber and stone lands, and if he makes that application for his own use and for his own benefit, and without any agreement with any other person, he has an absolute right to sell that land, or mortgage it, or any interest in it before final proof, assuming all those things to be true, you don't think you did anything in this matter at all in violation of the law, do you”?

(Testimony of John E. Hobbs.)

Mr. KEIGWIN.—We invoke the Examiner to restrain the examination within reasonable limits, and also to prevent the answering of palpably improper questions.

Mr. BUNDY.—I shall be very, very glad to have the Examiner certify it up to the Court, if he desires.

The EXAMINER.—I will state to the attorneys that I think the Examiner has the power to limit examinations within what may be termed “reasonable limits,” and that if the Examiner has made a mistake with reference to this limitation, of course, that can be certified to the Court, and the expression of the Court thereon, the opinion of the Court obtained. At the same time, I don’t think it is necessary for me to limit the examination as it now stands, and I think, with the objection that has been interposed by counsel for the Government on record, that the witness can answer the question, and should answer the question.

Mr. KEIGWIN.—We will ask to have an exception recorded.

Q. (Last question read by stenographer).

A. Knowing what I know now, I don’t believe you have a right to bargain it away until after final proof.

Q. Now, Mr. Hobbs, that doesn’t answer the question. I will say to you that you are wrong about that under the law, but that is not what you are here to decide?

Mr. KEIGWIN.—I object to the suggestion as to the law made by counsel for the defendant, as being

(Testimony of John E. Hobbs.)

manifestly improper. I suggest to Mr. Bundy the propriety of withdrawing the suggestion.

Mr. FRASER.—I never heard of a time that you couldn't tell a witness the law of the case in these courts.

Mr. BUNDY.—In view of what appears here, that this witness has been taken into the sweat-box and told point blank—

Mr. KEIGWIN.—I object to the use of the word sweat-box on the ground that there has been no evidence offered here to show that there has been anything or any practice which would warrant the use of any such name in connection with the examination of this witness in the trial of this case.

Mr. BUNDY.—Q. I didn't ask you what you thought the law was. The question, if you will follow it closely, is, asking you to assume, for the purpose of testifying, the facts stated in that question, and then asking, on that assumption, as to whether or not you think you did anything wrong. Read the questions again. (Question read by stenographer as follows:) "Assuming, Mr. Hobbs—I will ask you to follow my question a little closely now—assuming for the purpose of your evidence that under the law of the United States any citizen has a right to file an application for the purchase of timber and stone lands, and if he makes that application for his own use and for his own benefit, and without any agreement with any other person, he has an absolute right to sell that land, or mortgage it, or any interest in it before final proof, assuming all those things to be

(Testimony of John E. Hobbs.)

true, you don't think you did anything in this matter at all in violation of the law, do you''?

A. I don't understand the question.

Q. You know what I mean?

A. No, I don't.

Q. You are a college graduate, aren't you, Mr. Hobbs? A. I believe I am.

Mr. KEIGWIN.—Q. Mr. Hobbs, are you a lawyer? A. I am not.

Q. Have you ever studied law? A. No, sir.

Mr. BUNDY.—Q. Maybe I can put it in a different way. If it is the law that any citizen of the United States who enters land under the Timber and Stone Act, for his own use and for his own benefit, and without any prior agreement with any person, has a right to sell that land or his right in it, or to mortgage it at any time after his original filing and before final proof, if those things are true, then you didn't do anything to violate that law, did you, if that is the law?

A. If that is the law, I don't think I did.

Mr. BUNDY.—I don't think you did either, Mr. Hobbs?

Redirect Examination.

(By Mr. KEIGWIN.)

Q. Mr. Hobbs, with how many officers of the Government have you talked about this case and your testimony to be given?

A. Only one that I know of.

Q. Who was that? A. Mr. Watt.

Q. Who is Mr. Watt?

(Testimony of John E. Hobbs.)

A. Mr. Watt and I had an interview this morning and yesterday morning.

Q. Have you ever talked with the district attorney, the United States attorney for this district, Mr. Lingenfelter? A. No, sir.

Q. Did you ever talk with his predecessor, Mr. Ruick? A. No, sir.

Q. Did you ever talk with any of the assistant district attorneys attached to the United States attorney's office in this district? A. No, sir.

Q. Have you ever appeared before the Grand Jury in connection with this case? A. No, sir.

Q. Have you ever talked with Mr. Gordon, this gentleman on my right, or myself?

A. Only this morning.

Q. In your testimony here? A. I did.

Q. Had you ever seen any of us before?

A. Not that I know of.

Q. Well, you mean by talking to Mr. Gordon this morning, you mean answering his questions on the examination? A. I did.

Q. Did you ever have an interview with him before that time? A. No, sir.

Q. Were you ever asked to have an interview with us before? A. No, sir.

Q. Or with anybody except Mr. Watt?

A. No, sir.

Q. Did you have an interview with Mr. Watt yesterday? A. Yes, sir.

Q. Will you tell the Examiner that conversation as nearly as you can?

(Testimony of John E. Hobbs.)

A. He asked me what time I filed, who I went up there with—

Q. You mean Mr. Watt asked you those things?

A. He did. —who located me, the price paid for the location, by what way I went, how long I was there, what I did while I was there, where I stopped while up there, the number in the party—

Q. And, generally, just the things you have been taken over in your examination this morning?

A. It was.

Q. Did you make any objection to answering those questions? A. I did not.

Q. Did you ask him any questions as to whether you were going to be prosecuted?

A. I did.

Q. What did you say to him?

A. I asked him what they were going to do with the entrymen.

Q. What did he say?

A. He said they weren't going to do anything that he knew of.

Q. What else did he say?

A. I asked him if, in previous cases in Oregon, Colorado, and around, any of the entrymen had ever been taken up for entering land, and he said none with the exception of what got mixed up on the witness-stand.

Q. Did he tell you that you had committed perjury? A. I don't think he did.

Q. Did he tell you that you had committed any crime?

(Testimony of John E. Hobbs.)

A. I think he gave me to understand that I had.

Q. What did he say would happen to you if you had?

A. He told me it was outlawed in three years.

Q. Did he threaten you with any prosecution?

A. He did not.

Q. Did he give you any promise of immunity other than to say that anything you had done had been outlawed?

A. That is all he said.

Q. And that was in response to your question, was it?

A. It was.

Q. And that was the sweat-box?

A. I guess that is what the sweat-box is.

Q. Since you left here at a quarter past twelve, the noon recess, have you been asked by anybody to go into this back room and make any further statement?

A. No, sir.

Q. Has any person connected with the Government's case approached you with reference to your testimony, or asked you to make any statement or do anything else?

A. No, sir.

(Witness excused.)

[Testimony of James F. Belk, on Behalf of the Complainant.]

JAMES F. BELK, produced as a witness on behalf of the complainant, being first duly sworn, testified as follows:

Direct Examination.

(By Mr. GORDON.)

Q. Where do you reside, Mr. Belk?

(Testimony of James F. Belk.)

A. In Boise.

Q. How long have you resided in Boise?

A. I came here in '91.

Q. What part of '91?

A. 1891, the first day of February.

Q. What is your business?

A. At present I am excavating and contracting.

Q. What was your business in 1902?

A. I was running sheep.

Q. You took up a claim under the Timber and Stone Act in 1902, did you?

A. I believe it was 1902, yes, sir.

Q. I show you timber and stone land sworn statement, dated September 26th, 1902, and ask you if that is your signature.

A. Yes, sir.

Q. I show you non-mineral affidavit, dated September 26, 1902, and ask you if you signed that paper?

A. That is my signature, yes, sir.

Q. And your testimony given at the land office on final proof, dated March 17, 1903—is that your signature?

A. Yes, sir.

Q. And is that the signature of your wife, Angie A?

A. Yes, sir.

Q. Did anyone suggest to you the propriety of taking up a timber claim, or the advantage it would be to you?

A. Yes, sir.

Q. Who was it?

A. I think I first talked with Mr. Gillum.

Q. Mr. Mack Gillum?

A. Yes, sir.

Q. Did Mr. Gillum—what did Mr. Gillum say about it?

(Testimony of James F. Belk.)

A. He was telling me that he had located some timber, and that the probabilities were that I could find some if I wanted to.

Q. Did he tell you how much he had made out of his?

A. I don't think that he did; he had only filed on his I believe when I was talking to him.

Q. Did he tell you how much he was going to make out of his? — A. He never did.

Q. Well, did you go up with him to locate this land? A. No, sir.

Q. With whom did you go?

A. George T. Ellis, and two of the Bayhouse brothers, and I went together, in one rig.

Q. Did you know Mr. John I. Wells at that time?

A. I did.

Q. Did you know Mr. Patrick Downs at that time?

A. I met him up in the timber there; I think that was the first time I met Mr. Downs.

Q. Had you had any talk with Mr. John I. Wells before you went up there with reference to locating a timber claim?

A. Before the locating of it, yes.

Q. How long was that before you left Boise to look over this land?

A. That was only a matter of probably two or three weeks before we went up there.

Q. What did Mr. Wells say about it?

A. He said his partner, Mr. Downs, was on the ground up there, and told us where to go to find him; he was tracing out the land, and would show it to us.

(Testimony of James F. Belk.)

Q. Who arranged for you to go with Mr. Bayhouse and the other gentlemen you went with?

A. We arranged that ourselves.

Q. Did they tell you themselves that they were going and when they were going?

A. Yes, sir; we arranged—us four arranged to go together.

Q. Were they at Mr. Wells' office when you went there?

A. No, I don't remember of ever meeting either one of the Bayhouses in the office, or Ellis either.

Q. Where did you go to locate this land?

A. We went to Kempner's ranch—that was where we stopped.

Q. Did you meet Mr. Downs there?

A. Yes, sir.

Q. And you say that is the first time you had ever met him?

A. I think, as far as I remember, that was the first time.

Q. Were you required to pay Mr. Downs anything for his services? A. I paid him \$25.

Q. Did you pay him, or did you pay Mr. Wells that? A. I paid at the office.

Q. At Mr. Wells' office? A. Yes.

Q. Did you pay it before you went to view this land? A. No, sir.

Q. When did you pay it?

A. After I made the filing.

Q. And Mr. Downs took you all out in a party?

A. Yes, sir.

(Testimony of James F. Belk.)

Q. How far from Kempner's ranch did you go?

A. I should judge it was three to four miles from the ranch.

Q. Did you walk? A. Yes, sir.

Q. And was it right alongside of the road that you located, or did you go off the road?

A. We crossed the river from Kempner's ranch.

Q. Was it a trail or road that you followed?

A. It was right through the woods and hills.

Q. And did he show you a piece that you were to locate on? A. Yes, sir.

Q. What did he say when he showed it to you?

A. He showed me the markings and the lines and told me about the estimate, the number of hundreds of thousand feet of timber.

Q. When you arrived at this location, did he say, "This is the piece you are to take, Mr. Belk."

A. No, sir.

Q. What did he say?

A. No, sir, he showed me this quarter of land, and says: "Here is number so and so; if you wish this, you can see what there is in it; you have been around up there and you know what there is."

Q. And that one suited you? A. Yes, sir.

Q. Did he give you a description of it at that time?

A. Yes, we had the numbers there on the ground.

Q. Well, I mean, did he write out a description for you to take back with you, or did he give it to somebody else?

A. I can't remember whether each party brought

(Testimony of James F. Belk.)

a note of each separate tract, or whether it was all in one body or in one sheet.

Q. How do you think it was? Do you remember? What is your best recollection?

A. Well, I am under the impression now that the different numbers were together, that is, in a long statement, but I am not sure.

Q. Do you know which one of the party had that statement? A. No, I do not.

Q. Well, did you go to Mr. Wells' office after you returned? A. Yes.

Q. Did Mr. Wells have those descriptions there?

A. Well, I can't say whether he did or not.

Q. Was anything said there about preparing the papers for the land office?

A. The papers were prepared in Mr. Kinkaid's office.

Q. Did you know Mr. Kinkaid before that time?

A. No, sir.

Q. Who directed you to Mr. Kinkaid's office?

A. Perhaps Wells.

Q. You went from Wells' office to Kinkaid's office?

A. That is where we got the papers after they were filled out.

Q. Was that the day after you returned from Kempner's ranch?

A. That was after we returned from up there; I don't remember whether it was the next day or not—it was soon after.

Q. And Mr. Kinkaid prepared this sworn state-

(Testimony of James F. Belk.)

ment, and did he also prepare this notice of publication? A. I don't know.

Q. Well, look at the next paper, the non-mineral affidavit—did you get that paper from Mr. Kinkaid too? Can't you remember about that? Can't you answer that, Mr. Belk?

A. I think I got that in the register's office.

Q. Did you receive that at the register's office?

A. I think so.

Q. Was Mr. Kinkaid at the register's office when you went there, or did he go to the register's office with you?

A. Not that I know of; no, he never went to the register's office with me.

Q. Who went to the register's office with you?

A. The three parties that was in my crowd.

Q. And you filed this sworn statement at that time, and paid a fee there, did you?

A. Yes, sir.

Q. How much was the fee you paid?

A. I think it was \$12.50.

Q. And then, in the course of time, you went to make your final proof? A. Yes, sir.

Q. And do you remember the occasion of your making your final proof? Do you remember being at the land office for that purpose?

A. Yes, sir.

Q. Who was with you then?

A. Those witnesses that I had named, Mr. Ellis, and Mr. Bayhouse, I believe,—one or both of the Bayhouses.

(Testimony of James F. Belk.)

Q. Any of the other parties that had located at the same time you did?

A. Not that I remember of other than those two or three that I required.

Q. Do you remember how much money you paid into the land office when you made your final proof?

A. \$412.50, I believe.

Q. Did you pay that in check or in cash?

A. In cash.

Q. Where had you kept that money?

A. In the Capital State Bank, where I kept an account.

Q. In the Capital State Bank—is that what you call it? Is that the name of it?

A. Yes, sir.

Q. And when did you draw that money out of the bank?

A. At the time I made final proof.

Q. Do you know how long you had had that money in the bank?

A. I had had an account there for nearly all the time for two years or more.

Q. I mean, how long had you had that \$412 in the bank.

Mr. BUNDY.—Those particular dimes and nickels. A. That particular \$400?

Mr. BUNDY.—He wants to know how long you had had that particular money in the bank. That is the question.

A. Sometimes I had a thousand dollars there; sometimes I didn't have anything—sometimes I kept

(Testimony of James F. Belk.)

my account on the right side of the sheet by getting loans.

Q. Did you get it on the right side of the sheet, as you stated, this \$412, by getting a loan?

A. I think I got a loan at that time.

Q. From the bank? A. Yes.

Q. Did you give a note for it? A. I did.

Q. And how long was that note to run?

A. Something like thirty days, I think.

Q. I will ask you if you remember this question being put to you on your cross-examination, when you were making your final proof, question 16, "Did you pay, out of your own individual funds, all the expenses in connection with making this filing, and do you expect to pay for the land with your own money?" Was that question asked you, and did you make this answer: "Yes, I do"?

Mr. BUNDY.—I object to that, as a question asked by the land department without any authority of law, as incompetent, irrelevant and immaterial, evidently asked for the purpose of impeaching their own witness, and for the further reason that the answer to the question doesn't at all dispute his evidence on the stand to-day.

Q. (Last question read by stenographer.)

A. I don't quite understand the question yet.

Mr. BUNDY.—The question is, Mr. Belk, do you remember being asked that question and making that answer.

A. The answer don't seem to bear out the question, as I understand it.

(Testimony of James F. Belk.)

The EXAMINER.—Read the question and answer again, Mr. Stenographer. (Question and answer read by stenographer.)

A. Certainly I paid for it out of my own money.

Mr. GORDON.—Did you answer that question?

Mr. FRASER.—Why don't you show the witness that, and then ask him?

Mr. GORDON.—Gentlemen, if you have any objection to the way I ask questions, please state it on the record.

Q. (By Mr. GORDON.) Was that answer made by you?

Mr. FRASER.—Ask to see the paper, Mr. Belk; then you can tell then whether you remember it or not.

A. I don't remember whether I did or not.

Mr. FRASER.—That is your best answer?

Mr. GORDON.—Q. Was this question asked you, Mr. Belk: "Where did you get the money with which to pay for this land, and how long have you had same in your actual possession?" And did you make the following reply: "From my business operations. Two years or more."

A. Perhaps I did—I don't remember.

Q. I think you identified your signature to that, and I will ask you to read questions 16 and 17 yourself, and ask you whether or not you responded to questions 16 and 17 as in that paper, the same being the questions I have read to you.

A. Question 16, "Did you pay, out of your own individual funds, all the expenses in connection with

(Testimony of James F. Belk.)

making this filing, and do you expect to pay for the land with your own money?" My answer was "Yes." Seventeen: "Where did you get the money with which to pay for this land, and how long have you had same in your actual possession?" My answer was: "From my business operations. Two years or more." That is the way the answer was written.

The EXAMINER.—Was that your answer?

A. I don't remember whether it was or not. But you have all the record there, but the answer to the above question, question 16, which the gentleman read before, is "yes," written at the end, following question 16.

Mr. GORDON.—Q. The answer is, "Yes, I do," isn't it?

Mr. BUNDY.—That means, I suppose, that you expected to pay for it with your own money.

Mr. GORDON.—Q. Mr. Belk, how long after you made this final proof did you negotiate with anyone for the sale of this property?

A. It was only a few days.

Q. Did someone come to see you with reference to purchasing it, or did you go to see them with the view of selling it?

A. I went to see Mr. Kinkaid.

Q. And did you tell him you had come there to sell the property?

A. I told him that I had the certificate, register's receipt, whatever you call it, and wanted to dispose of it.

(Testimony of James F. Belk.)

Q. And did you dispose of it to him that day?

A. I think I did.

Q. Did he make you an offer for it?

A. Well, he must have made me an offer for it, or we wouldn't have made the trade.

Q. How much did he offer you for it?

A. I think it was \$800.

Q. And you took the \$800 that day?

A. Yes.

Q. Had you ever talked to anyone about selling that property to Mr. Kinkaid before that one time?

A. I think I talked with some of the boys that had proved up prior to my proof.

Q. But you had never had any conversation with Mr. Kinkaid with reference to selling this property until that day you went there? A. No, sir.

Q. And did you make the deed while you were there, sign the deed while you were there on that occasion?

A. No, I had to get Mrs. Belk, of course, to sign the deed,—I think the day following Mr. Kinkaid and I talked together, possibly the same day—I won't be sure now.

Q. You didn't take Mrs. Belk to the office with you?

A. No, not on the first occasion?

Q. Did you know Mr. Horace S. Rand?

A. I do not.

Q. Did you read this deed before you signed it?

A. Yes, sir.

Q. Was it just as it is now, or were there some

(Testimony of James F. Belk.)

blank spaces in there—names not filled in?

A. No, the names was on there, the deed was made to some party, but I don't remember the name, whether it was Rand or not.

Q. Did they have the consideration of \$1000 in there? A. I can't say as to that.

Q. Did Mr. Kinkaid pay you in cash or in check?

A. He paid me in check.

Q. Did you have that check cashed, or did you deposit it in your bank?

A. I deposited it in the bank to my credit.

Q. In the same bank where you said you kept your account? A. Yes, sir.

Q. Did you ever make any other deed for this property, or were you ever requested to make another deed for this property? A. I never was.

Q. I notice that this deed was acknowledged before L. M. Pritchard. Was he in Mr. Kinkaid's office at the time you acknowledged that deed, or did you go out somewhere?

A. I think that Pritchard's office was adjoining Kinkaid's; if I remember right now it was—it was on the same floor. I believe I am correct in that, but I am not sure.

Mr. GORDON.—We offer in evidence the sworn statement of Mr. Belk, identified by him, dated September 26, 1902; notice of publication of the same date; the non-mineral affidavit identified by Mr. Belk, also of the same date; the testimony of Mr. Belk on final proof, dated March 17, 1903; the cross-examination attached, which was also identified by

(Testimony of James F. Belk.)

Mr. Belk; the register's and receiver's certificates, dated March 17, 1903; certified copy of the patent, dated June 10, 1904; and the deed, dated March 24, 1903, running from James F. Belk and Angie A., to Horace S. Rand, consideration \$1000, all to the southwest quarter of section 12, township 7 north of range 8 east, Boise Meridian.

(Marked Plaintiff's Exhibit No. 82A to 82N inclusive.)

Cross-examination.

(By Mr. BUNDY.)

Q. Mr. Belk, at the time you made final proof, in answer to some question the land office men asked you, you testified that you paid for your filing with your own money and expected to pay for the land with your own money, which, according to your evidence, is strictly true. In answer to question 17, you stated that the money was derived from the prosecution of your business, and that you had had it for two years. Was there any time for two years prior to the time you made that final proof, Mr. Belk, that you didn't have as much as \$400?

A. There never was.

Q. There wasn't any time but what you could have drawn \$400 from the bank, at any time?

A. There never was at any time, whether it was deposited there or not.

Q. You don't deposit it in the safety deposit vault, do you? A. No, sir.

Q. When you deposit money there you simply check against it, and when the balance is on the

(Testimony of James F. Belk.)

wrong side you give a note?

A. That is the way I did business, yes.

Q. Mr. Belk, at the time you made your first filing, there was in existence no agreement of any kind, express or implied, verbal or written, with the defendants, or anyone else, relative to what you should do with the title to this land when you got it?

A. No, sir.

Q. Was there any such agreement in existence at the time you made final proof?

A. There never was one.

Q. Mr. Belk, the Government of the United States in this action has seen fit to charge you and a good many other entrymen with having entered into an unlawful conspiracy to defraud the United States out of its timber land. Is it true or false?

A. It is false in my case.

Q. And that in furtherance of that agreement, you agreed with the defendants in this action that you would enter the land for their benefit, and that you would go before the land office and testify falsely in order to get the land to turn over to these defendants. Is that allegation true or false?

A. It is false.

Redirect Examination.

(By Mr. KEIGWIN.)

Q. Mr. Belk, have you talked with any officer or representative of the Government in regard to your testimony in this case?

A. Nothing except some few questions here on the 6th of this month, when I was first subpoenaed.

(Testimony of James F. Belk.)

Q. Whom did you talk to then?

A. I don't know the gentleman's name. It was in the adjoining room here—they made out a list of witnesses.

Q. What did he talk to you about—just about what Mr. Gordon has asked you to-day?

A. About the same ground, yes, sir.

Q. Make any threats against you?

A. No, sir.

Q. Charge you with any crime? A. No, sir.

Q. Tell you that if you would testify the way he wanted you to he wouldn't put you in the penitentiary? A. He never did.

Mr. BUNDY.—We don't claim that you do that with all witnesses. You wouldn't dare with Mr. Belk. When you get a poor fellow frightened—

Mr. KEIGWIN.—Do I understand that you do claim that we do threaten people?

Mr. BUNDY.—No, except in so far as it appears from the evidence of the witnesses here. I am making no claim.

Mr. KEIGWIN.—Well, if you have any charge of that kind to make, we would be very glad to have it on the record. If there is any charge of any threatening or any improper solicitation of witnesses, we would like to have it, and try it out before the Court.

Mr. BUNDY.—It is all on the record that I know anything about, or that I ever will know about, probably.

Mr. KEIGWIN.—If you don't know all there is to know, it is because you don't inquire.

(Witness excused.)

[**Testimony of Dennis Thornton, on Behalf of the Complainant.**]

DENNIS THORNTON, produced as a witness on behalf of the complainant, being first duly sworn, testified as follows:

Direct Examination.

(By Mr. GORDON.)

Q. Mr. Thornton, how old are you?

A. Fifty-one years.

Q. Where do you reside? A. In Boise.

Q. How long have you resided in Boise?

A. Since my family came here, four years next July.

Q. Are you employed now? A. Yes, sir.

Q. By whom?

A. Barber Lumber Company.

Q. In what capacity?

A. Timber cruiser.

Q. Will you tell me what a timber cruiser is, Mr. Thornton?

A. It is estimating land mostly, seeing what is on each quarter.

Q. That is, you go out on the land and you make an estimate, and report how many feet of timber you estimate is on a quarter section?

A. Yes, sir.

Q. How long have you been in the employ of the Barber Lumber Company?

A. Well, the Barber Lumber Company themselves for the last four years.

Q. Ever since it has been doing business here?

(Testimony of Dennis Thornton.)

A. No, not since they was doing business here; they was doing business when I come out here this last time.

Q. When did you first come to Idaho?

A. Why, I first came to Idaho I think in 1896 or '97, I think, about twelve years ago.

Q. By whom were you employed then?

A. I was mining up in the Basin.

Q. How long did you continue to mine up in the Basin?

A. I stayed there that first summer I came out here, then I went out to the coast and come back the following spring, and stayed there all that summer, and then went home.

Q. Where was your home?

A. Chippewa Falls, Wisconsin.

Q. What was your business or occupation in Wisconsin when you went back there?

A. That winter I went down south; there was parties going down there looking over some land for a company at New Orleans.

Q. Were you employed to go down there?

A. Yes, sir.

Q. By whom were you employed?

A. By a man by the name of Whalen; he was a cruiser, and I went down there and run a compass for him.

Q. That was in what year?

A. I couldn't exactly tell you; it must have been—I think it is twelve years next March since I left there; then I was out here about two and a half

(Testimony of Dennis Thornton.)

years, and then that fall I went back home, and then went down there—I think that would make it between nine and ten years ago, I think. I didn't keep track of it.

Q. And then when you left New Orleans where did you go? Did you go back to Wisconsin?

A. No, I came out here I think—yes, I went back to Wisconsin from there.

Q. How were you engaged in Wisconsin then?

A. Well, I think I went up in the woods that winter to scale logs in Wisconsin, one winter since then.

Q. Who were you scaling those logs for?

A. For the Chippewa Lumber & Boom Company.

Q. Who owned it then?

A. I think the Chippewa Lumber & Boom Company owned it.

Q. Who was the president of the company?

A. I think Mr. Irvin was.

Q. That was the year 1900?

A. Well, I couldn't tell you what date it was.

Q. Then you came out here again?

A. I didn't come down here. I went up in the northern part of the state, for the Humbird Lumber Company. After I scaled there that winter, the following spring I came out here for the Humbird Lumber Company, up in the northern part of the State, around Sandpoint.

Q. Were they incorporated?

A. They was doing business up there.

Q. How long were you employed by that company?

(Testimony of Dennis Thornton.)

A. I was just there part of one summer.

Q. Then did you still remain here?

A. No, I went back home again.

Q. Were you employed when you went back home?

A. Yes.

Q. By whom?

A. I don't remember right whether I worked on the railroad there for awhile; I think I did. Still I ain't certain; but I went to work then I think for the Northwestern Lumber Company.

Q. Who was the president of that company?

A. Well, I couldn't tell you unless Mr. Barber is.

Q. Mr. James T. Barber?

A. Yes, sir; whether he is or not I ain't certain. Mr. BUNDY.—I think he is now.

Mr. GORDON.—Q. How long did you work for that company?

A. I worked there all that winter for them, and then come out here in the following spring.

Q. What was your employment with them? Was it timber cruising? A. Yes, sir.

Q. And then you came here the following spring?

A. I left there the first day of April, I think.

Q. In what year? A. 1902.

Q. The first of April? A. Yes, sir.

Q. Now, were you employed to come here?

A. Yes, sir.

Q. By whom?

A. Mr. Moon sent me to Spokane to Mr. Palmer.

Q. That is Mr. Sumner G. Moon?

(Testimony of Dennis Thornton.)

A. Yes, sir.

Q. And you went to Spokane to see Mr. A. E. Palmer?

A. Yes, sir, I had a letter to him.

Q. And you saw Mr. Palmer?

A. Yes, sir.

Q. Then what did you do?

A. He give me a letter to Mr. Kinkaid here in Boise.

Q. And you went down to see Mr. Kinkaid?

A. Yes, sir.

Q. Did you have any talk with Mr. Palmer about any employment or what you were to do?

A. He told me I was to come down here and look over some lands.

Q. That was in the spring of 1902?

A. Yes, sir.

Q. Mr. Palmer told you that?

A. Yes, sir, Mr. Palmer.

Q. Then you came and saw Mr. Kinkaid?

A. Yes, sir.

Q. Mr. John Kinkaid?

A. Yes, sir.

Q. What did you have to say to Mr. Kinkaid?

A. Well, he just give me the plots of this land I was to look over, and I went right out into the woods and started to work.

Q. What month was this?

A. It must have been the latter part of April; I come out here the first.

Q. By whom were you paid?

A. I was paid by Mr. Palmer?

Q. Mr. A. E. Palmer?

A. Yes, sir.

Q. And were you paid by check?

(Testimony of Dennis Thornton.)

A. Whichever way I wanted it, down here, for my expenses.

Q. What was the land that you were to cruise?

A. He gave me those up here in the Basin.

Q. Do you remember what sections they were?

A. I remember what townships they were in; I can't remember the sections. It was 6—4 and 7—5, and I think I looked over some in 6—5. I think that is all.

Q. Were all of those sections that you went over open to entry at that time?

A. I don't know nothing about that. I was just working on what he told me.

Q. Did you know whether anybody had been cruising that before?

A. Not to my knowledge they hadn't.

Q. Did you cruise alone, or who cruised with you?

A. I had a compassman.

Q. What was his name?

A. His name was Lally.

Q. What was his first name? A. Mike.

Q. Did you bring him here with you?

A. Yes, sir.

Q. Where from? A. From Chippewa.

Q. Do you know where he is now?

A. He is up in the northern part of the State; I think he lives at Sandpoint.

Q. Did you cruise all of 6—4?

A. No, sir, I didn't cruise on the west side at all.

Q. You cruised all of the west side?

A. No, I didn't cruise all of the west side; I

(Testimony of Dennis Thornton.)

cruised the east side two tiers or sections. How far south I went I don't remember, but not over a mile south of the north side of the town.

Q. Now, what were the other sections you say you cruised—the other townships?

A. 7—5 and part of 6—5, not all of it.

Q. Did you cruise all of township 7—5?

A. Well, no; I don't think I cruised all of the town; I think there was some in there that I didn't look over. Some of it was mineral lands; somebody was working on quartz claims there, and I didn't look over that.

Q. It was a rather large continuous body of timber lands that you cruised in that section of the country, wasn't it?

A. Yes, there was quite a lot.

Q. Do you know about how many thousand acres you cruised?

A. No, sir, I never kept no track of it.

Q. Could you approximate it now?

A. I think probably a town and a half would cover all I looked over altogether.

Q. Did you make reports on this?

A. Yes, sir.

Q. Who to? A. To Mr. Palmer.

Q. Do you remember what month you made your report to Mr. Palmer?

A. Every month, maybe twice a month.

Q. How long were you cruising there?

A. I was there 165 days altogether, from the time I left home until I got back.

Q. How much of that time were you cruising?

(Testimony of Dennis Thornton.)

A. Only just merely the time it took me to come here and go back, probably eight or ten days altogether.

Q. Where did you go back to?

A. Back to Chippewa.

Q. Were you still employed by Mr. Moon then?

A. I was employed after I went back there.

Q. In what capacity, and for what company?

A. For the Northwestern Company.

Q. As a cruiser?

A. Yes, I was working around the camps there, running lines, or whatever I had to do.

Q. You went back the latter part of 1902?

A. Yes, sir, in September I think it was.

Q. Did you have a camp up here in the woods?

A. I had a tent, and stayed wherever I had to.

Q. Was anybody with you but this Mr. Lally?

A. No, sir, that was all.

Q. Did you do your own cooking, etc.?

A. Yes, sir.

Q. How long did you remain back in Chippewa?

A. I was there till I come out here this last time—something over three years, I think, or about three years.

Q. In the employ of the Northwestern Lumber Company? A. Yes, sir.

Q. Then you came out here at whose instance? Who employed you?

A. Mr. Moon, I think, or Mr. Barber both employed me.

Q. Were they in partnership then, or did they

(Testimony of Dennis Thornton.)

have a company then?

Mr. BUNDY.—Mr. BARBER is president and Mr. Moon is treasurer of the Northwestern Lumber Company.

Mr. KEIGWIN.—You mean that Mr. Thornton was employed by the Northwestern Company?

Mr. BUNDY.—While there, and out here he was employed by the Barber Lumber Company.

Mr. GORDON.—Do I understand that Mr. Barber and Mr. Moon hold the same positions in the Northwestern Lumber Company as they do in this company—I mean, one being president and the other treasurer?

Mr. BUNDY.—Mr. Barber was president of the two companies, and Mr. Moon was treasurer of the Northwestern Lumber Company. Mr. Moon is not the treasurer of this company—I rather think he is treasurer—he is an officer, though; they are both connected with both companies.

Mr. GORDON.—Q. What year did you get here the last time you came?

A. It will be four years next July, the third or fourth or fifth day of July.

Q. Then you got here in 1905?

A. It was four years next July.

Q. You came here in July, 1905?

A. Yes, sir.

Q. Did you meet Mr. Downs and Mr. Wells when you were here in 1902?

A. I met Mr. Downs up there in the woods; he was locating people on some of those lands, but I

(Testimony of Dennis Thornton.)

didn't have nothing to do with him.

Q. Was he locating people on some of the lands you were cruising? A. I suppose so.

Q. In what township was that, as you remember?

A. I seen him there in 7—5, at Centerville.

Q. Did you see him in 6—4?

A. No, I never seen him in 6—4.

Q. Now, do you know whether or not Mr. Downs had cruised 6—4 before you came here?

A. I don't know nothing about what Mr. Downs done out there; I just merely met him out there. What he done I don't know.

Q. Were you here to check up some cruises that had been made before?

A. Those plats that Mr. Kinkaid give me, I supposed they was claims that was taken. I was looking over those.

Q. And they were the claims that you understood that Steunenberg had been taking up?

A. I don't know who took them up.

Q. You don't know whose work you were here checking up, do you?

A. All I know about it is just merely the plots I got to look over these lands. I was just estimating the timber on those descriptions I got; whether they was overlooked or not before that I don't know.

Q. Was Mr. Hosely here on any one of those trips you came on? A. No, sir.

Q. Mr. Hosely came down here after you were here the first time? A. Yes, sir.

Q. Do you know whether Mr. Hosely was sent

(Testimony of Dennis Thornton.)

here to check up some of your estimates?

A. I don't know a thing about what he was sent here for.

Q. You made your report to Mr. Palmer?

A. Yes, sir.

Q. That was in the latter part of 1902?

A. Yes, the summer of 1902.

Q. Mr. Thornton, you took up a timber claim in 1906?

A. Yes, sir.

Q. Who located you?

A. I located myself.

Q. And you didn't pay any location fee?

A. No, sir.

Q. And who prepared this paper for you, this sworn statement?

A. That is my own writing.

Q. And is the non-mineral affidavit also in your own writing?

A. Yes, sir.

Q. And you paid your own expenses at the land office?

A. Yes, sir.

Q. And you made your final proof?

A. Yes, sir.

Q. And where did you get the money with which you made the proof?

A. I got it through my sister in law, but it was my father in law that had the money, and I had it secured by mortgage; I had property there in the east.

Q. How much was it that you got from her?

A. Just enough to pay for the land.

Q. Did you borrow it, or was it money belonging to your wife?

A. I borrowed the money.

Mr. KEIGWIN.—Q. Where did your sister in

(Testimony of Dennis Thornton.)

law live? A. In Coeur d'Alene.

Q. In this State? A. Yes, sir.

Mr. GORDON.—Q. What is her name?

A. Mrs. Casey now; she wasn't married at that time.

Q. What was her name then?

A. Miss McGee.

Q. Did you meet Governor Steunenberg when you were here any time? A. I met him once.

Q. Where did you meet him?

A. In the Idanha.

Q. Was it with reference to any of the timber you were checking?

A. Just about what kind of a country it was up there.

Q. Who was there at that time?

A. Just Mr. Palmer and Mr. Steunenberg.

Q. When was that?

A. It was that summer of 1902.

The EXAMINER.—Are you a surveyor?

A. I can subdivide a section; I never studied the business, though.

The EXAMINER.—Did you have instruments with you when you were cruising?

A. Just a pocket compass.

Mr. GORDON.—Q. Mr. Thornton, after you made your final proof you conveyed to the Barber Lumber Company, did you? A. Yes, sir.

Q. Did you ever receive the patent?

A. Yes, sir, I did.

Q. And you turned that over to the Barber Lum-

(Testimony of Dennis Thornton.)

ber Company? A. Yes, sir.

Q. That is, I understood, your signature to the sworn statement, dated January 27, 1906, and to the non-mineral affidavit? A. Yes, sir.

Mr. GORDON.—We offer in evidence the sworn statement of Dennis Thornton, which he has identified, dated January 27, 1906; the non-mineral affidavit of the same date; the testimony given by Mr. Thornton on final proof, dated April 3, 1906; the cross-examination attached; the register's and receiver's receipts, dated April 3, 1906; and certified copy of the patent, dated August 7, 1906. I haven't the deed.

Mr. KEIGWIN.—Will you give us the date of the deed, Mr. Bundy?

Mr. BUNDY.—May 7, 1906.

(Marked Plaintiff's Exhibit No. 83A to 83G, inclusive.)

Cross-examination.

(By Mr. BUNDY.)

Q. When you came out here in the spring of 1902, Mr. Thornton, to do some cruising, you had Mike Lally with you to run the compass. He would keep track of where the lines were and you would go through the forties and estimate approximately the timber on them? A. Yes, sir.

Q. Were you making a close estimate?

A. As close as I knew how.

Q. At that time you didn't have any estimate of anybody else's which you were checking, did you?

A. No, sir, I did not.

(Testimony of Dennis Thornton.)

Q. You had no means of knowing whether you were cruising lands which were open to entry or lands which had been entered, or anything else?

A. I didn't know anything about it.

Q. You met Mr. Pat Downs just simply as one cruiser meeting another?

A. Just accidentally.

Q. You had no talk with him about what he was doing or what you were doing?

A. I had an idea, of course, what he was doing—locating people.

Q. And he had no talk with you about your estimating? A. No, sir.

Q. One of the businesses of a cruiser is to keep still? A. Yes, sir.

Q. You say that summer you cruised a portion of 6—4? A. Yes.

Q. As a matter of fact, that wasn't entered at all, as you learned afterwards, was it?

A. I don't know when it was entered.

Q. You don't know whether that was subject to entry at that time or not?

A. I don't know a thing about it, no, sir.

Q. You were instructed to report to Mr. Palmer the result of your investigation of this Basin country? A. Yes, sir.

Q. And you did so from time to time?

A. Yes, sir.

Q. Now, this timber and stone claim that you entered, Mr. Thornton, you paid your own expenses at the land office? A. Yes, sir.

(Testimony of Dennis Thornton.)

Q. And paid for the land to the United States with money which you borrowed from a sister in law, wasn't it? A. Yes, sir.

Q. And you said you gave her security for it?

A. Yes, sir.

Q. At the time you filed on that land, or at the time of making final proof upon it, did you have any understanding or agreement, express or implied, written or verbal, with the Barber Lumber Company, or anybody else, by which you had promised or agreed to turn that property over to them, or any interest in it, as soon as you got title?

A. No, sir.

Q. At either of those times, did any person, firm, or corporation have any interest in the land you were entering? A. Not a cent.

Q. And after you made final proof you sold to the Barber Lumber Company? A. Yes, sir.

Q. How much did they pay you?

A. I think it was \$850.

Q. Was it cash or check?

A. I think it was check.

Q. Did you have any talk or negotiations with the Barber Lumber Company, or anybody representing them, relative to the sale of that property, before final proof? A. No, sir, I did not.

Q. Then I take it that the charge made in this complaint that you went to the land office and perjured yourself for the benefit of the Barber Lumber Company is not true? A. No, sir, it is not.

(Witness excused.)

**[Testimony of William H. Martin, on Behalf of the
Complainant.]**

WILLIAM H. MARTIN, produced as a witness on behalf of the complainant, being first duly sworn, testified as follows:

Direct Examination.

(By Mr. GORDON.)

Q. You are William H. Martin, are you?

A. Yes, sir.

Q. What is your business, Mr. Martin?

A. Working at the penitentiary.

Q. In what capacity are you employed there?

A. I am the farmer.

Q. And how long have you been employed at the penitentiary?

A. About four years and three or four months, I guess.

Q. What was your occupation in 1902, in September?

A. I didn't have any occupation that year; I was living up in the mountains with my wife for her health.

Q. And you took up a claim under the Timber and Stone Act in 1902, did you?

A. Yes, sir.

Q. I show you timber and stone land sworn statement, dated September 29, 1902, and ask you if that is your signature to that paper?

A. It is, yes, sir.

Q. I show you non-mineral affidavit of the same date, and ask you if you signed that paper?

(Testimony of William H. Martin.)

A. Yes, sir.

Q. I show you the testimony given by William H. Martin before the land office on final proof, dated March 18, 1903, and ask you if you signed that paper?

A. Yes, sir.

Q. Did you sign the cross-examination attached?

A. Yes, sir.

Q. I show you deed, dated March 24, 1903, by William H. Martin, and Henrietta B. Martin, to Horace S. Rand. Is that your signature to that deed?

A. Yes, sir.

Q. And is that the signature of your wife?

A. I think it is.

Q. Did your wife file on a timber claim?

A. Yes, sir.

Q. Mr. Martin, did anyone suggest to you the advantage of filing on a timber claim at that time?

A. No, sir.

Q. I will ask you who located you on your timber claim?

A. Pat Downs.

Q. How long had you known Mr. Patrick Downs?

A. He come up there right where I was living and cruised timber. I didn't know him before he come up there. I was up there when he come up there.

Q. Did you know Mr. John I. Wells at that time, the gentleman who is present here?

A. I did not, not at that time.

Q. What place did you go to to view this land, what town?

A. I was staying twenty-two miles east of Idaho

(Testimony of William H. Martin.)

. City at that time.

Q. That wasn't Kempner's ranch?

A. That was Kempner's ranch.

Q. You were staying at Kempner's ranch?

A. Yes, I was staying at Kempner's ranch.

Q. Did you go up, you and your wife, alone, or did someone go with you?

A. There was another couple went up with us, Mr. Stahl and his wife, went up from Kempner's ranch to the timber.

Q. What is Mr. Stahl's first name?

A. Benjamin Stahl, I believe it was.

Q. Did you know what it would cost you to locate a timber claim at that time?

A. Downs told me what it would cost me.

Q. What did he tell you? A. \$25.

Q. \$25 apiece? A. Yes.

Q. You and your wife and this Mr. and Mrs. Stahl went out to these claims? A. Yes, sir.

Q. How far were they from Kempner's ranch?

A. It must have been two or two and a half miles.

Q. Did you walk or drive? A. Walked.

Q. Had Mr. Downs told you before you started from the ranch on what claims he would locate you?

A. He told us he had some claims up there for us. I spoke to him, asked him if I could get a claim for I and my wife, and he said I could, and he said he would save a couple of claims close by so that we could walk to them.

Q. You wasn't in a hurry about it?

A. No, sir, I wasn't going to file until I came

(Testimony of William H. Martin.)

down from the mountains in October.

Q. He took you and your wife out to these claims and located you? A. Yes, sir.

Q. Did he give you the numbers?

A. Yes, sir.

Q. How long after that was it that you came to Boise and filed in the land office?

A. It was along the first few days of October.

Q. No, it was September that you came, but I want to know how long you had been over the land before that.

A. I think I came down the first of October, if I remember.

Mr. BUNDY.—It was the next to the last day of September, I guess.

Mr. GORDON.—Q. How long before you came down had you been over your land?

A. It must have been—I don't remember—a couple of weeks anyway.

Q. Did you pay Mr. Downs there, or did you pay the locating fee to somebody here?

A. I paid it here.

Q. To whom did you pay it? A. Mr. Wells.

Q. Was that the first time you knew Mr. John I Wells? A. That was the first time.

Q. Did you and your wife go to his office?

A. I went; I don't think she was with me.

Q. Did you have your numbers, the description of your land, at that time? A. Yes, sir.

Q. Who prepared this first statement for you, the sworn statement, the first paper you filed in the

(Testimony of William H. Martin.)

land office? Who drew that paper up for you?

A. Who made out the filing papers?

Q. Yes.

A. Harry Worthman made out the papers.

Q. Did you know Mr. Harry Worthman before that time?

A. No, I did not. I had seen him a few times, but wasn't acquainted with him.

Q. You hadn't had him do any law business for you?

A. No, sir.

Q. Did you go to Mr. Wells' office before you went to Mr. Worthman?

A. Yes, sir.

Q. Who directed you to go to Mr. Worthman's office?

A. Wells.

Q. Did you go and get your wife's papers prepared at Mr. Worthman's office?

A. She went right along with me.

Q. Then you went from Mr. Worthman's office to the land office?

A. Yes, sir.

Q. And your wife went along, and you both filed your papers at the same time?

A. Yes, sir.

Q. Did you pay a filing fee at the land office?

A. I paid the advertising fee, I believe.

Q. That is \$7.50 or \$12.50?

A. Whatever it was—I don't remember.

Q. Was that your own money?

A. Yes, sir.

Q. No one had furnished it to you for that purpose?

A. No, sir.

Q. Did you have an agreement or understanding at that time that you would convey this property,

(Testimony of William H. Martin.)

when you got final proof, to any person?

A. No, I did not.

Q. In due course the time came for you to make your final proof. Were you up at Kempner's ranch at that time, or had you returned to Boise?

A. I was here at that time.

Q. Do you remember the occasion of your making the final proof?

A. I don't remember the date.

Q. Do you remember the occasion you were there paying in the money and making final proof?

A. Yes, I remember it.

Q. Was your wife with you then?

A. She was.

Q. Do you remember how much money you paid in the land office that day?

A. I paid \$400 for my claim, and the fees, whatever that was.

Q. Did you pay that in check or in cash?

A. I paid it in cash.

Q. Where did you get that money?

A. Got it over at the bank, the bank I was doing business with; I went over to the bank and got it.

Q. Did you borrow it from the bank?

A. Yes, sir.

Q. Did you give them a note for it?

A. I did.

Q. How long before you got that money from the bank did you understand that you could get the money with which to make your final proof.

A. I just simply—a day ahead of final proof I

(Testimony of William H. Martin.)

give them a note and got the money.

Q. Did anybody endorse the note for you?

A. My wife.

Q. That was at which bank?

A. Commerce.

Q. When did you repay this money to the bank?

Do you remember how long the note ran for?

A. I don't remember; it wasn't a great while, though.

Q. How long after you made final proof did you enter into negotiations for the sale of this land?

A. It was only a few days; I don't remember just how long.

Q. And with whom did you negotiate?

A. Kinkaid.

Q. Did you know Mr. Kinkaid at that time?

A. No, sir, I wasn't acquainted with him.

Q. How did it happen that you went to see Mr. Kinkaid?

A. I was told that he was buying land.

Q. Do you remember who told you?

A. Mr. John Wells told me for one, and there was several more.

Q. When did Mr. Wells tell you that?

A. That is what I can't remember—some time after I filed and before I proved up. I don't remember the date.

Q. Did you ever have any talk with Mr. Wells about getting money with which to make final proof?

A. No, sir.

Q. Mr. Martin, in your cross-examination, which

(Testimony of William H. Martin.)

you have identified here, there seems to be some discrepancy between the statement you have made here and the one you made on your cross-examination, as to where you actually got the money with which to make your final proof. I will read this question to you and see if it will refresh your memory. Question 17: "Where did you get the money with which to pay for this land, and how long have you had same in your actual possession?" Answer: "I sold ranch last year and got the money at that time." Do you remember that question being put to you and making that answer?

A. Yes, sir, I had the money deposited in the Commerce Bank, but I had the most of it drawed out. I suppose I might have had some money in there, but not enough for this business.

Q. Do you remember how much you borrowed from the bank that day?

A. I borrowed \$800, that is, I and my wife together. I think I had the money for the fees myself.

Q. With whom did I understand that you had the negotiations for the sale of this property? With whom did you arrange for the sale of this property?

A. Kinkaid.

Q. Did you see Mr. Worthman concerning this property after he drew those original papers for you?

A. I did not.

Q. Did Mr. Worthman charge you anything for drawing those papers?

A. I think not. I don't think I paid him any-

(Testimony of William H. Martin.)

thing.

Q. How many times did you see Mr. Kinkaid about the sale of this property?

A. I don't think I was there more than once or twice after I proved up.

Q. Did you go there with your receipts that they gave you at the land office the same day you proved up?

A. I don't think I did that day; I think it was the next day or so—I don't remember.

Q. You told him you had the receipts and wanted to sell the land, did you? A. Yes, sir.

Q. Did he make the agreement with you that day?

A. Yes, I believe he did, yes, sir.

Q. You say Mr. Wells spoke to you and directed you to Mr. Kinkaid, as I understood you?

A. Yes, sir.

Q. Do you remember when that was?

A. I don't remember when it was; it might have been when I paid him the locating fees, or it might have been after—I don't remember.

Q. You paid him the locating fee before you filed, didn't you?

A. Yes, sir, Downs told me to pay Wells the locating fee.

Q. How much did Mr. Kinkaid offer you for the property? A. \$800.

Q. And did he give you \$800 that day that you signed the deed? A. Yes, sir.

Q. Was it in check or in cash? A. Check.

(Testimony of William H. Martin.)

Q. And you deposited it in your bank?

A. Yes, sir.

Q. Do you know whether it was his check or somebody else's check?

A. No, sir, I don't remember.

Q. Did you know Mr. Horace S. Rand?

A. No, I did not.

Q. You didn't take Mrs. Martin along with you the first time you went to see Mr. Kinkaid about this land, did you?

A. I don't remember.

Q. Do you remember whether you went to see Mr. Kinkaid once or twice

A. I think I was there twice.

Q. But you wouldn't be certain?

A. No, I ain't certain.

Q. Was Mrs. Martin with you both times?

A. I couldn't tell you whether she was or not—I don't remember.

Q. Was she there the day you signed the deed?

A. Yes.

Q. Do you remember meeting Mr. L. N. Pritchard there, a notary public?

A. No, I do not. We got our deeds acknowledged in the Pierce real estate office.

Q. You took the deed out then and went to some other office? A. Yes, sir.

Q. And then took it back to Mr. Kinkaid?

A. Yes, sir.

Q. And you left the receipts with Mr. Kinkaid, did you, that they gave you at the land office?

(Testimony of William H. Martin.)

A. Yes, sir.

Mr. GORDON.—We offer in evidence the sworn statement of William H. Martin, dated September 29, 1902; the non-mineral affidavit, also dated September 29th, and identified by Mr. Martin; the testimony he gave on final proof, identified by him, dated March 18, 1903; also the cross-examination, which he said he signed; the register's and receiver's certificates, dated March 18, 1903; the testimony of the other witnesses, given on final proof; certified copy of the patent, dated June 10, 1904; and the deed, dated March 24, 1903, made and executed by William H. Martin and Henrietta B., his wife, to Horace S. Rand, consideration \$1,600, all to the southeast quarter of section 7, township 7 north of range 8 east, Boise Meridian. The deed also conveys the east half of the northwest quarter, and lots 1 and 2 of section 7, township 7 north of range 8 east, Boise Meridian.

(Papers marked Plaintiff's Exhibit No. 84A to 84N, inclusive.)

Cross-examination.

(By Mr. BUNDY.)

Q. Mr. Martin, you said you borrowed \$800 at the bank. Was a part of that for your wife's claim?

A. Yes.

Q. Then the financial part of it, paying the locating fee to Wells, and paying the filing fees at the land office, and finally paying the \$2.50 an acre to the Government, was all carried on by you, was it?

A. Yes, sir.

(Testimony of William H. Martin.)

Q. That is, you did it for your wife?

A. Yes, sir.

Q. And I suppose when it came time to sell, you also arranged for that for her?

A. Yes, sir.

Q. So your wife didn't really have much to do with the business part of it? A. No, sir.

Q. You say you went up to Kinkaid because you heard he was buying? A. Yes, sir.

Q. That was generally known here, wasn't it?

A. Yes, it was generally known here.

Q. The time he began buying these claims he was buying all claims that was brought to him?

A. Yes, sir.

Q. You say Mr. Wells told you?

A. Yes, sir.

Q. Counsel asked you if you were directed by Mr. Wells to go up there. You don't wish to say that he had any strings on you, do you?

A. No, sir.

Q. At the time you made your first filing on this land, in your sworn statement you said, in substance, that at that time you had not entered into any agreement, directly or indirectly, with any person, firm or corporation, by which any person other than yourself was to acquire any right, title, or interest in the land you were then applying to purchase. That was true at that time, was it not? A. Yes, sir.

Q. And that same thing was true when you made final proof? A. Yes, sir, it was.

Q. So that at the time you made final proof you

(Testimony of William H. Martin.)

had no arrangement with any person whatever by which they were to acquire any interest in the land?

A. That's right.

Q. What is your age, Mr. Martin?

A. Sixty-three.

Q. And I see you were a soldier.

A. Yes, sir.

Q. Now, the Government of the United States has seen fit to charge you here, with other citizens of this city, with having entered into a fraudulent and unlawful conspiracy for the purpose of defrauding the United States out of a hundred and sixty acres of timber lands. Is that true or false?

A. That is false.

Q. And it is alleged by the Government, through its agents here, that for the purpose of perpetrating that fraud, for the purpose of carrying out that agreement, you deliberately went to the land office and perjured yourself. Is that true or false?

A. That is false.

(Witness excused.)

[Testimony of Henrietta B. Martin, on Behalf of the Complainant.]

HENRIETTA B. MARTIN, produced as a witness on behalf of the complainant, being first duly sworn, testified as follows:

Direct Examination.

(By Mr. GORDON.)

Q. You are Mrs. Henrietta B. Martin?

A. I am.

(Testimony of Henrietta B. Martin.)

Q. And you are the wife of Mr. William H. Martin, who has just testified? A. Yes, sir.

Q. And you entered a claim under the Timber and Stone Act in 1902, did you?

A. I did.

Q. I show you sworn statement, dated September 29, 1902, and ask you if you signed that paper.

A. I did.

Q. That is your signature? A. Yes, sir.

Q. I show you non-mineral affidavit, dated September 29, 1902, and ask you if you signed that.

A. I did.

Q. I show you testimony given by Henrietta B. Martin on final proof before the land office, March 18, 1903, and ask you if you signed that. A. I did.

Q. I show you the cross-examination attached thereto, and ask you if you signed that.

A. I did.

Q. Mrs. Martin, do you remember who located you on this claim? A. Yes, sir.

Q. Who was it? A. Patrick Downs.

Q. Where did you first meet Mr. Patrick Downs?

A. Up at Kempner's, where we were staying.

Q. You were visiting there that summer?

A. No, we were just staying there for my health.

Q. How long had you been there?

A. I think pretty nearly two months; I won't say for certain. We was there four months altogether.

Q. Did you talk to Mr. Downs about taking up one of these claims?

A. Only just asked him if we could locate.

(Testimony of Henrietta B. Martin.)

Q. And he told you that you could?

A. Yes, he said he could locate us.

Q. And you and your husband went to Mr. Downs to locate you? A. Yes, sir.

Q. How far from Kempner's ranch did you go?

A. It must have been a mile and a half.

Q. And he showed you two claims. Did you know that he had two claims he was keeping for you, before you went out there? A. Yes.

Q. And he carried you and your husband over those two claims, and your husband located on one and you on the other? A. Yes.

Q. How long after you went over this land with Mr. Downs did you come to Boise and file your papers in the land office?

A. It was quite a little while till we came down to stay. I couldn't remember how long. I can't remember that.

Q. It was two weeks at least?

A. Oh, my, yes.

Q. Do you remember what month it was that Mr. Downs showed you the claims?

A. I can't remember—I don't think I can. My memory isn't very good. Like all the rest I have had a sick spell.

Q. And had you ever met Mr. John I. Wells at that time?

A. Never had seen him at that time.

Q. Did you go to Mr. Wells' office when you got to the city, with your husband? A. No.

Q. You located the same day your husband did.

(Testimony of Henrietta B. Martin.)

You filed the same day your husband did, and did you see Mr. Wells that day?

A. We saw him—I don't know—I don't remember that.

Q. Do you remember where you had your papers prepared? A. Yes.

Q. Where?

A. That was at Harry Worthman's.

Q. Did you know Harry Worthman before that?

A. No, I never saw him.

Q. Do you know who told you to go to Mr. Worthman's office? A. No.

Q. You and your husband went to Mr. Worthman's office?

A. Yes, we went together.

Q. And he prepared the papers you filed in the land office the first time you went. And then it came time for you to make final proof, and do you remember that occasion, of going to the land office that day? A. Yes.

Q. Do you remember how much money you paid into the land office that day?

A. I don't believe I can remember.

Q. Do you know where you got the money that you paid into the land office that day?

A. Yes, I know that.

Q. Where did you get it?

A. We got it at the bank.

Q. You and your husband gave a note?

A. Yes, we got it at the bank, gave a note, and we had had money in there, and could borrow it. That

(Testimony of Henrietta B. Martin.)

is all I know.

Q. Do you know how much money you had in the bank at that time?

A. No, I don't; I can't remember that.

Q. Did you have \$800 in there before you made this borrow?

A. I don't know how much we had.

Q. Your husband kept a bank account—you didn't keep a separate account?

A. Oh, my, no; it wasn't woman's rights.

Q. They gave you a receipt at the land office that day you paid your money in there and made your final proof? A. Yes.

Q. What did you do—do you remember what you did with those receipts? A. No, I don't.

Q. Had you met Mr. Kinkaid then?

A. No.

Q. And did you see Mr. Kinkaid the day you made your final proof?

A. No, I don't think that day.

Q. When did you see him?

A. I can't remember that; it was some days later.

Q. And then you took your receipts and went to Kinkaid's office, and you and your husband executed the deed, and conveyed the property?

A. I think we did.

Mr. BUNDY.—We will admit that that is her signature to the deed testified to by her husband.

Mr. GORDON.—Q. Do you remember how much you were paid the day you signed the deed?

A. It seems like it was \$800 or \$850.

(Testimony of Henrietta B. Martin.)

Q. That is your best recollection?

A. That is my best recollection.

Mr. GORDON.—We offer in evidence the sworn statement identified by Mrs. Martin, dated September 29, 1902; her non-mineral affidavit of the same date; her testimony, given on final proof, dated March 18, 1903; the cross-examination attached; the testimony of the other witnesses given before the land office; the register's and receiver's certificates, dated March 18, 1903; and the deed which was put in evidence with her husband's testimony; also the certified copy of the patent, dated June 10, 1904; all to the east half of the northwest quarter, and lots 1 and 2 of Section 7, township 7 north of range 8 east, Boise Meridian.

(Marked Plaintiff's Exhibit No. 85A to 85N inclusive.)

Cross-examination.

(By Mr. BUNDY.)

Q. Mrs. Martin, the financial part of this real estate venture of yours with the United States was carried on entirely by your husband, as I understand. That is, he paid the filing fees, and the locating fees, and paid the land office for the land, transacted the business?

A. Yes, sir; of course I was with him.

Q. When it came to arranging for the sale of it, he attended to that, as I understand, fixing the price and all that sort of thing?

A. Yes.

Q. You left to him the details of paying the bills and selling the land, and he attended to that for

(Testimony of Henrietta B. Martin.)

you?

A. Yes; he told me so that I could understand, but of course I have forgotten now.

Q. Mrs. Martin, the Government, in this case, has charged you with a lot of other ladies and gentlemen, with having entered into an agreement with the defendants in this action, including the Barber Lumber Company and some others, and state in their complaint that you entered into this land for the benefit of the defendants, and that you went to the land office and testified falsely, in order to get the land for the Barber Lumber Company, under that agreement. Is that allegation true or false?

A. It is false.

(Witness excused.)

At this time an adjournment was taken until 10 A. M., Wednesday, February 17, 1909, at which time the hearing was resumed, pursuant to adjournment, the Examiner and counsel for the respective parties being present.

[Testimony of Homer C. Granger, on Behalf of the Complainant.]

HOMER C. GRANGER, produced as a witness on behalf of the complainant, being first duly sworn, testified as follows:

Direct Examination.

(By Mr. GORDON.)

Q. Your name is Homer C. Granger?

A. Yes, sir.

Q. Where do you reside, Mr. Granger?

(Testimony of Homer C. Granger.)

A. Centerville, Boise County.

Q. How long have you resided there?

A. Pretty near thirty years—something over twenty-nine.

Q. What is your occupation? A. Miner.

Q. What was your occupation in 1901?

A. Mining was my occupation, and work connected with it; sometimes sawmill work, and other work in connection with mining.

Q. Are you a mining engineer?

A. No, sir, just an ordinary miner.

Q. You made an entry under the Timber and Stone Act in 1901, did you? A. Yes, sir.

Q. I show you timber and stone sworn statement, dated September 20, 1901, and ask you if you signed that paper? A. That is my signature.

Q. I show you the testimony given by Homer C. Granger on final proof, dated December 12, 1901, and ask you if you signed that? A. That is mine.

Q. I show you deed, dated July 28, 1903, and ask you if you signed that?

A. Yes, sir, I think that is mine.

Q. Had you a wife at that time, Mr. Granger?

A. Yes, sir.

Q. Mr. Granger, who first spoke with you about taking up a timber claim?

A. I think John I. Wells was the first one that mentioned it to me.

Q. What did he say about it?

A. Well, I don't know as I could tell you exactly what he said, but there was considerable talk about

(Testimony of Homer C. Granger.)

a railroad being put up into the Basin in a short time, and he says, "It would be a pretty good scheme to have some timber claims here; there will be a market for it," something to that effect.

Q. Did you locate on a claim? A. Yes, sir.

Q. What was Mr. Wells' occupation at that time?

A. He was a miner at that time.

Q. What had been his occupation?

A. He had been mining since he had been up there in the Basin, that is, the same as I was mining, or working with mines.

Q. Did he ever keep a hotel?

A. Not there in town; I think he run a boarding-house about Grimes Pass. I think he was connected with a boarding-house up there one summer.

Q. Did anyone else locate at the same time you did?

A. My wife—that is, filed at the same time I did.

Q. Where did you have those filing papers prepared, the sworn statements?

A. As near as I remember now, they was made out in the land office.

Q. By whom?

A. I couldn't tell you who. I think they was made out by some of the employees there in the land office, if I remember right.

Q. Was Mr. Wells there at the land office at the time?

A. Yes, sir, I think him and his wife filed the same day I did.

Q. Do you know whether Mr. Wells prepared

(Testimony of Homer C. Granger.)

that paper for you?

A. I don't think he did. I wouldn't say positively, but I don't think he did.

Q. At that time, did you have the money with which to purchase your timber claim?

A. I hadn't the cash in hand at that time, but I expected—I had a piece of ground up there that I expected to sell and expected to get the money for it.

Q. You didn't prove up at the time you advertised you would prove up, did you? A. No, sir.

Q. Why was that?

A. I started down here to prove the date it was set, and in the meantime an acquaintance of mine up there had told me I had better be careful.

Q. Who was that?

A. A man by the name of James B. Terry. He said he didn't know anything about the business, but thought there might be some trouble about it. I came over to Idaho City and saw Karl Payne, who had an office there at that time—I think he is here in town now—and he advised me not to try to prove up, and I turned around and went home.

Q. Why did he tell you that?

A. I stated the case as nearly as I could, and he told me I had better not prove up.

Q. What facts did you state to him?

A. What the facts were.

Q. Tell us what the facts were.

A. Well, I told him I had filed on the ground, and told him what Mr. Terry had told me—that I had better be careful. I told him I wanted to know if

(Testimony of Homer C. Granger.)

there would be any trouble about it.

Q. And then you went back home?

A. Yes, sir.

Q. And did you see Mr. Wells after that?

A. I didn't see him until later, when I came down here. He had named me as a witness for his proving up. I think he telephoned to me or wrote to me—I don't know which now—and wanted me to come down and act as a witness for him.

Q. Did you see Mr. Kinkaid in the meantime?

A. Yes, sir.

Q. Where did you see him?

A. If I remember right, I saw Mr. Kinkaid at Centerville, between the time I should have proved up and the time I came down to act as a witness.

Q. Did you have a talk with him about this matter?

A. Yes, sir. I had worked for him and knew him, and he always stopped at my house when he was going through town and had a few minutes to spare.

Q. Did you talk to him about this claim?

A. Yes, sir.

Q. Did he suggest the subject, or did you?

A. I think he asked me why I didn't prove up.

Q. What did you tell him?

A. I told him just why I didn't.

Q. Did you get any money from him?

A. No, sir.

Q. Did you get any money from him later?

A. I got some he owed me for work later.

Q. How much did he owe you for work?

(Testimony of Homer C. Granger.)

A. I think it was either \$60 or \$70.

Q. After he spoke with you about proving up, you came down here, did you?

A. I came down as a witness for Mr. Wells.

Q. Did you see Mr. Kinkaid on that occasion?

A. Yes, sir.

Q. Where did you see him?

A. I think he had an office here in town.

Q. Did you go to his office? A. Yes, sir.

Q. What did he tell you?

A. He told me that he thought I had better prove up; he said he thought it would be all right, didn't think there would be any trouble about it, thought Mr. Payne was mistaken.

Q. Did he send you to see a lawyer?

A. He told me he would like to have me go and see a lawyer. That is, he said: "If there is anything wrong about it, I want to know as well as you." And he said he would like to have me go and see a lawyer, anyone you are a mind to, but, he said, "Go and see the best."

Q. Did he name two lawyers who were the best?

A. No, sir.

Q. Did he give you \$10 to see a lawyer, to pay a lawyer? A. Yes, sir.

Q. Did you go to see Senator Borah?

A. Yes, sir.

Q. What did you say to him?

A. I asked him what the show was for a man to get into trouble over a timber claim. He asked me what trouble I wanted to get into, and I said I didn't

(Testimony of Homer C. Granger.)

want to get into any.

Q. Did he tell you you wouldn't get into any trouble?

A. The points Mr. Payne seemed to make were, there would be trouble, or at least, as I understood him, the points was, that I had no right to take up that ground with the intention of selling it—in other words, I suppose, as a matter of speculation. And I asked Mr. Borah if I had a right to take up that land and sell it. He said I had a perfect right to sell it five minutes after I got patent for it, if I wanted to.

Q. Did you offer to pay him? A. I did.

Q. Did he decline to take the pay?

A. Yes, sir.

Q. Did you take it back to Mr. Kinkaid, or did you keep it?

A. I took it back to Mr. Kinkaid; it was not my money.

Q. Then you afterwards proved up?

A. Yes, sir.

Q. Do you remember how long afterwards you made your proof?

A. It was within a day or two of that time.

Q. Where did you get the money with which you made proof?

A. I had \$250 of my own money that I put into it, and I borrowed the balance from John I. Wells.

Q. The gentleman here in the courtroom?

A. Yes, sir, I think he is here.

Q. Did you give Mr. Wells a note for this money?

(Testimony of Homer C. Granger.)

A. No, sir.

Q. Pay him any interest on it? A. No, sir.

Q. Now, you made a deed for this property. You deeded this property to someone?

A. Not at that time.

Q. How long afterwards did you deed it?

A. It was the next summer, I think.

Q. How many deeds did you make for this property? A. I made two.

Q. Didn't you make the first one before you got the receipt from the land office?

A. Yes, sir, I disposed of the land—well, no, not before I got the receipt. I don't know whether I made the first one before that or not. Have you both deeds there?

A. If you had the deeds I could probably tell you, but I don't remember now.

Q. Do you remember to whom you made the first deed out, who was the grantee in the first deed?

A. No, sir, I don't now.

Q. In whose office did you sign that deed?

A. The first one?

Q. Yes.

A. I couldn't tell you that either; I don't remember.

Q. Did you make a deed in blank?

A. No, I think not. I am not sure; I think not, though.

Q. Do you know whom you talked to about making that deed?

A. I don't remember, but I presume the only one

(Testimony of Homer C. Granger.)

would have been either Mr. Kinkaid or Mr. Wells.

Q. And when you made the first deed, did you get any money?

A. Well, I got some more money from Mr. Wells after I proved up, but I don't remember now whether it was when I made the deed or not.

Q. How much did you get?

A. Well, I am not positive. I made a statement here to this agent the other day—I don't know what his name is—and I told him I got \$400 all together, but since, I believe I made a mistake. I think I got \$500 from Mr. Wells all together, that is, including the money I borrowed to prove up, and what I borrowed after, before I made final deed.

Q. As I understand, you borrowed some money from Mr. Wells to prove up with?

A. Yes, sir.

Q. And then, before you made the final deed, he gave you some more money? A. Yes, sir.

Q. Do you remember how much that was?

A. I say I don't remember exactly, but I think now I got \$500 altogether.

Q. The next time he gave you money, after you got the money from him with which to prove up, how much was that, as near as you can remember?

A. As near as I can remember, it was \$300, as I think I borrowed \$200 when I proved up. I had \$250 of my own, and I think I got \$200 from him when I proved up.

Q. How long had you known Mr. Wells?

A. Why, I had known him, I think, something

(Testimony of Homer C. Granger.)

like ten years; he had been a resident up there.

Q. Now, I want you to tell me, if you can remember, whether you made a deed at the time that you got the first money from Wells, or before then, or afterwards?

A. I think it was after.

Q. How long after?

A. I couldn't say now; I don't remember just how long it was.

Q. Was it the same day?

A. No, I think not; I think it was some little time after.

Q. Did you see Mr. Pritchard then?

A. No, I don't think I met Mr. Pritchard at that time. The only time that I remember of meeting Mr. Pritchard was when I made the final deed.

Q. How did you meet him then?

A. Went into his office to make out the deed.

Q. Did he make the second deed out?

A. I think he made the second deed out.

Q. When you made the first deed were you told that you would have to make another deed after that, later on?

A. Yes, I think I was.

Q. Who told you that?

A. Well, now, I couldn't tell you; that is, I presume it was either Mr. Wells or Mr. Kinkaid, because I think they were the only parties I talked with, and one of them—I don't know which—I think mentioned making a second deed.

Q. Did your wife join in the first deed?

A. No, sir, I think not.

Q. You had a wife at that time?

(Testimony of Homer C. Granger.)

A. Yes, sir.

Q. And your wife is still living?

A. Yes, sir.

Q. Now, how long after you made the first deed did you make the second deed?

A. I can't tell just how long it was, because I don't remember what the date was that this first deed was made.

Q. I mean, as near as you can remember, weeks and months.

A. Well, I presume it was something like six months. If I remember right, the first deed was made sometime during the winter, and the second one, I think, was made in July, if I remember right, some time in the summer.

Q. Yes, the last one was made in July, 1903.

A. Yes.

Q. When you made this first deed did either Mr. Kinkaid or Mr. Downs tell you that they would have another deed prepared later, so as to show a deed after the patent, instead of after the final receipt?

A. They spoke about making a second deed, certainly, but I don't remember that they said after patent; they said there would be another deed.

Mr. BUNDY.—The second deed was a year before patent, wasn't it?

Mr. GORDON.—I am not asking what was done. I am trying to find out what was said when you made the first deed.

A. I have told you as near as I can. This was several years ago, and I don't remember; I can't

(Testimony of Homer C. Granger.)

state the language that was used and swear to it.

Q. Now, when you made that first deed, didn't they give you \$150?

A. No, sir, they didn't give me any money at all that I remember of, when I made the first deed.

Q. Do you remember how much was given you when you made the second deed?

A. \$150.

Q. And who gave you that?

A. Mr. Pritchard, I think. It was in his desk; I think he took it out of his desk himself and give it to me.

Q. Did he hold out the money you had gotten from Mr. Wells?

A. Yes, sir, \$150 was all I received on the final deed.

Q. Then how much did you receive over and above what the property cost you? I am not speaking now over and above what was loaned you. I mean over and above what the property cost.

A. The cost of the property, I believe, was \$412.-50, and I received \$650 for the claim.

Q. And that that you had gotten from Wells was deducted? A. Yes, sir.

Q. Were the other expenses deducted too?

A. The other expenses I paid myself.

Q. Were you allowed for that?

A. No, sir, I paid by own expenses.

Q. You were to have made your final proof in December, 1901, weren't you?

A. I believe so—I think it was later than 1901

(Testimony of Homer C. Granger.)

when those filings were made.

Mr. BUNDY.—You did make it in December, 1901, didn't you? That is the way you read it?

Mr. GORDON.—That was his testimony given on final proof.

The WITNESS.—I guess that is right, 1901.

Mr. BUNDY.—He made his final proof in December, 1901, but it wasn't approved until the following July.

Mr. GORDON.—This deed that you have identified here is the last deed that you made?

A. Yes, sir, I think it is.

Q. Were you asked to have your wife sign that deed? A. I think I was, the last one.

Q. Did you decline to do it?

A. No. I think her signature is on the last deed, isn't it?

Q. It isn't on the deed here. Now, can you remember—this deed was made July 28, 1903?

A. That was.

Q. Just a year after you got your final receipt from the land office. Now, did you make another deed after that, after you got your patent?

A. No, sir.

Q. Then the other deed was made some time prior to this, and, as you remember it, this is the last deed that you made?

A. Yes, sir, that is the last deed I made, to the best of my recollection.

Q. As I understand, you don't know who prepared your first deed?

(Testimony of Homer C. Granger.)

A. I couldn't say now who prepared the first one.

Q. Do you remember whether Wells was with you when you signed the first deed?

A. I think he was.

Q. Do you know whether it was in Mr. Wells' office that you signed the first deed?

A. No, sir, I don't remember whose office it was in.

Q. Did you know Mr. Kinkaid then?

A. Yes, sir.

Q. Could you tell whether it was in Mr. Kinkaid's office?

A. I don't remember whose office it was in, I say.

Q. You just have a recollection of signing the deed, and you can't remember now in whose office you signed it?

A. No, I don't remember whose office it was in.

Q. Or whether it was brought to your house?

A. It was not brought to the house; it was down here in town.

Q. In the first deed, the acknowledgment was taken before Mr. Pritchard, as I understood you to say.

A. No, I think not. I don't know who acknowledged the deed, but I have no recollection of meeting Mr. Pritchard at that time.

Q. Did you know Mr. Harvey H. Wells at that time? A. Yes, sir.

Q. Did he go over this timber land with you?

A. No, sir.

Q. Was Mr. John I. Wells one of your witnesses?

(Testimony of Homer C. Granger.)

A. Yes, I believe he was.

Q. Did he go over this land with you?

A. No, sir, not with me.

Q. Is that non-mineral affidavit, dated September 20, 1901, signed by you?

A. That is my signature there.

Mr. GORDON.—We offer in evidence the sworn statement of Homer C. Granger, dated September 20, 1901; the non-mineral affidavit, and the notice for publication, of the same date; the testimony of Mr. Granger, given on final proof, December 12, 1901; and the cross-examination attached; the register's and receiver's certificates, dated July 15, 1902; certified copy of the patent, dated January 28, 1904; and the deed, made by Homer C. Granger to A. E. Palmer, dated July 28, 1903, consideration \$1,000; all to the northeast quarter of section 14, township 7 north of range 5 east, Boise Meridian.

(Marked Plaintiff's Exhibit No. 86A to 86J inclusive.)

Q. Do you know Mr. A. E. Palmer?

A. No, sir.

Cross-examination.

(By Mr. BUNDY.)

Q. Mr. Granger, this piece of land you located was in close proximity to where you live, I believe.

A. It is about five miles, I think, from town.

Q. But it is was a piece of land that you were familiar with? A. Yes, sir.

Q. You had lived there so long?

A. Yes, sir, I was well acquainted with it.

(Testimony of Homer C. Granger.)

Q. You didn't have to spend any money having Pat Downs show you the corners?

A. No, sir.

Q. You were about the very first of all the people to enter a timber and stone claim in the Boise Basin, weren't you?

A. I think there was a very few ahead of us.

Q. I think there was five ahead of you.

A. I don't know just how many, but we was pretty near the first.

Q. At that time there wasn't very much known up in that section of the country about the timber and stone business?

A. No, I don't think the people generally knew anything about it.

Q. During the thirty years you have been up in the Basin, there never had been any land opened to timber and stone entries?

A. No, not until about that time; they usually collected a little stumpage from the logging people, but no entries that I know of.

Q. Now, this Basin land, so called, had not been open to entry very long before you made your entry?

A. No, sir.

Q. And at the time and for a good many years before that, you had known John I. Wells intimately, as a neighbor and miner.

A. Yes, sir, I was neighbors with him, and worked with him, and prospected with him, for, I think, about ten years.

Q. And you and he were good friends?

(Testimony of Homer C. Granger.)

A. Good friends.

Q. And John Kinkaid also was a lawyer that was interested in mines up there? A. Yes, sir.

Q. And spent considerable time up there?

A. Yes, sir, and considerable money.

Q. And I think you said you had worked for him from time to time? A. Yes, sir.

Q. Now, I think, when Mr. Wells spoke to you, he stated to you, in substance, that there was a good deal of talk about that time of a railroad going up into the Basin? A. Yes, sir.

Q. And suggested that it might be to your advantage to own a piece of timber? A. Yes, sir.

Q. Did he say to you that, at that time, there was a man by the name of Manning out here looking around at the timber? A. No, sir.

Q. At the time you concluded to enter you selected your own land? A. Yes, sir.

Q. Came to the land office and had your own papers made out at the land office?

A. Yes, sir.

Q. And had to pay a fee there?

A. Some little fee; I don't remember just how much.

Q. And you paid that? A. Yes, sir.

Q. Of course with your own money?

A. Yes, sir.

Q. And filed those first papers that have been shown you? A. Yes, sir.

Q. Now, at the time you filed those first papers in the land office, dated September 20, 1901, had you

(Testimony of Homer C. Granger.)

entered into any kind of contract or agreement, directly or indirectly, with any person whomsoever, by which the title you might acquire from the Government of the United States might inure in whole or in part to the benefit of any person except yourself?

A. No, sir.

Q. Then the statement you made at the land office was absolutely true?

A. It was true, yes, sir.

Q. Then, after you had filed, in conversation with some of your mining friends up there, the question was suggested that inasmuch as you were buying it with the view of ultimately selling it, that that might be a violation of the law?

A. Yes, sir.

Q. So that you hesitated before proceeding further?

A. Yes, sir.

Q. And then went to see Mr. Kinkaid, who told you that if that was the law he was as anxious to know it as you were?

A. I first went to see Mr. Payne.

Q. Then, as I understand it, you went to Mr. Kinkaid, who advised you that he was equally as anxious to know the law as you were and advised you to go to a good lawyer.

A. I met him and was talking with him.

Q. And he advised you to go to see the best lawyer?

A. He said, "Go to the best you can find."

Q. And you went to Senator Borah, who advised you that if you entered the land without any agreement you had a perfect right to sell it five minutes

(Testimony of Homer C. Granger.)

after patent issued? A. Yes, sir.

Q. And he advised you that final receipt was the same as patent, so that your understanding of the law was, after you had taken advice from Senator Berah, that you had a perfect right to sell it?

A. I supposed I was acting within the law.

Q. So that, with that information in your mind, that you had no right to sell until after final receipt, I suppose you didn't sell until after final receipt, did you? A. No, sir.

Q. At the time you made your final proof and paid this money into the land office, did you then have outstanding any agreement, of any kind, that you would sell this to anybody? A. No, sir.

Q. Did you have any such agreement until after final receipt had issued to you?

A. No, sir, I think not.

Q. At the time you borrowed this money from John I. Wells, you didn't agree to sell him the land, did you? A. No, sir.

Q. Or any interest in it? A. No, sir.

Q. There was nothing said about it?

A. No, sir.

Q. With reference to your first deed—under your understanding of the law, you didn't make any deed, did you, until after final receipt issued?

A. No, I didn't consider it a deed.

Q. I think you said your wife didn't sign that, and they wanted another? A. Yes, sir.

Q. And that was the reason they wanted another, wasn't it? A. Yes, sir.

(Testimony of Homer C. Granger.)

Q. It is charged in this action that the United States has brought against the Barber Lumber Company and others, Mr. Granger, that is, the action we are trying now, that you entered into a conspiracy with Mr. Kinkaid and Mr. Barber and a lot of the other defendants named, for the purpose of defrauding the United States out of this timber land. Is that true or false?

A. If I did, I don't know anything about it.

Q. Did you enter into any such agreement?

A. No, sir, I did not.

Q. It is charged in this complaint that, for the purpose of assisting the Barber Lumber Company in defrauding the United States, you went to the land office and deliberately testified falsely. Is that true or false?

A. I never heard of the Barber Lumber Company at that time, and I testified to the truth, as near as I know how.

Q. There wasn't any Barber Lumber Company for a long time after that, Mr. Granger.

A. I don't know anything about it; I never had heard of them at that time.

Redirect Examination.

(By Mr. KEIGWIN.)

Q. Did you say that Mr. Kinkaid was practicing law up in your neighborhood?

A. No, he was not practicing law; he was interested in mines.

Q. He was a lawyer, was he not?

A. Yes, I always understood that he had been a

(Testimony of Homer C. Granger.)

lawyer practicing at the bar in Denver, Colorado.

Q. When did he commence to live up in that neighborhood?

A. The first that I ever knew of him, I think, was in 1898; the first acquaintance I had with him he wanted to lease a little vein of quartz I had. He was working another mine close by, another vein, and he wanted a lease on this little vein I had.

Q. That was up in Boise County?

A. Yes.

Q. And he continued his interest in mining operations for some time afterwards?

A. Several years, yes, sir.

Q. And he came to the State senate from Boise County? A. Yes, sir.

Q. When you knew him down here in the town of Boise, was he practicing law then?

A. No, sir, I don't think he practiced law here at all.

Q. Do you know what he was doing?

A. No, I don't know, any more than I have told you that he had something to do with the timber business at that time. There was a good many locations made at that time, and he seemed to have something to do with that, as near as I know.

Q. Do you know in what year he moved down to Boise?

A. No, I don't; I think about 1900, though.

Q. That was after his service in the State senate?

A. Yes, sir, I rather think he never came back into the Basin after that, to reside there.

(Testimony of Homer C. Granger.)

Q. This region you speak of as the "Basin" lies in Boise County? A. Yes, sir.

Q. Which is nearly north of the county in which Boise is situated? A. Yes, sir.

Q. Do you know how long Mr. Wells lived up in Boise county?

A. I think about ten years before this date we are talking of now.

Q. Do you know when he came to Boise City?

A. No, sir, I never knew him until he came to Centerville there.

Q. Did he afterwards live in Boise City, after you had known him in Boise County?

A. Yes, he moved down here after that.

Q. Do you know what his occupation was here?

A. I see at one time he had an office here, and advertised in the paper as a real estate dealer.

Q. That was about the time you made your entry?

A. Yes, sir, and I know of one or two small mining deals that he made up there in the Basin.

(Witness excused.)

[Testimony of Joseph Sullivan, on Behalf of the Complainant.]

JOSEPH SULLIVAN, produced as a witness on behalf of the complainant, being first duly sworn, testified as follows:

Direct Examination.

(By Mr. GORDON.)

Q. Mr. Sullivan, where do you reside?

A. Boise.

Q. How long have you resided at Boise?

(Testimony of Joseph Sullivan.)

A. About ten years.

Q. What is your occupation?

A. Contractor.

Q. What was your occupation in 1903?

A. Contractor.

Q. You took up a claim under the Timber and Stone Act? A. Yes, sir.

A. I show you timber and stone land sworn statement, dated February 12, 1903, and ask you if that is your signature? A. Yes, sir.

Q. I show you the testimony given on final proof, dated May 7, 1903, and ask you if that is your signature.

A. Yes, sir, that is my signature. Can I look over this paper just a minute?

Q. Yes, sir. (Hands witness paper.)

A. This is my signature.

Q. I show you the cross-examination attached to the testimony on final proof, and ask you if that is your signature?

A. I think this is my signature, yes, sir.

Q. I show you the deed, dated May 14, 1903, running to Horace S. Rand, by Joseph Sullivan and wife Helen, and ask you if that is your signature to that deed? A. Yes, sir.

Q. Is that your wife's signature?

A. Yes, sir, that is my wife's signature.

Q. Mr. Sullivan, who first spoke with you about taking up a timber claim?

A. Why, the first I noticed of the timber propositions was in Portland. I seen signs while I was down there stuck up on billboards to take up a tim-

(Testimony of Joseph Sullivan.)

ber claim, and I had made up my mind to take one up at Portland then, but I didn't stay down there long enough, so I came back here. I was there on contracting business, buying material, and so I came back here and looked up the matter, and took up a claim here.

Q. You say you looked up the matter. Did you see anyone with reference to it?

A. No; I heard they were taking up a good deal of timber up on the Payette.

Q. Was this claim that you took up up on the Payette?

A. No, sir; that was up on the Crooked river.

Q. How far is that from Payette?

A. I don't know; I ain't very well acquainted with that country up there.

Q. Did you know Mr. John I. Wells at that time?

A. I don't think I did.

Q. Did you know Mr. Patrick Downs?

A. No, sir.

Q. Did you know Mr. Kinkaid?

A. I knew Mr. Kinkaid, yes, sir.

Q. Did you know Mr. Louis M. Pritchard?

A. I don't think I did, no, sir.

Q. Now, you went to view this claim, did you?

A. Yes, sir.

Q. With whom did you go?

A. I talked with a neighbor of mine about taking up claims; a friend of mine had taken up some ranch land over here on the bench, and we went over there to look at some of the land, and I didn't care about

(Testimony of Joseph Sullivan.)

taking it up, so I talked to a neighbor about taking up some timber claims, and I talked to Mr. Beckley and Mr. Schmelzel, Mr. Henry Schmelzel and Mr. Charles Beckley.

Q. Who was this neighbor you spoke with?

A. Mr. Beckley; he lived next door to me.

Q. Did they go up with you?

A. We formed a party among ourselves, Mr. Schmelzel and his wife, and Mr. Beckley and his wife, and myself and wife. My wife was in the east at that time, and we waited until she came back. We organized a little party and went up—a camping party—with the intention of looking over the country and taking up some timber.

Q. Did you know who the locator would be before you left here?

A. No, I didn't know who the locator would be, but I had heard there would be cruisers up at Kempner's.

Q. So you went to Kempner's?

A. Yes, sir.

Q. Did you meet Mr. Downs there?

A. That was the first time I met Mr. Downs.

Q. Did you introduce yourself to Mr. Downs, or did you have a letter of introduction?

A. No, sir, I introduced myself to him.

Q. And you stated your business?

A. Yes, sir.

Q. Did he tell you how much it would cost you?

A. Yes, sir.

Q. And how long after you addressed him on the

(Testimony of Joseph Sullivan.)

subject did you go out to look at the land?

A. I think that he was out on a cruise that afternoon; I think—I won't say for certain—but I think it was some of Mr. Eagleson's party that was up there, and when he came in that evening I spoke to him about it, and he said that there was some timber up there, but that it was spoken for, or something like that, and that he didn't know that there was any chance for us to take up a claim, but after talking to him that evening—there was a buffet there and we had a sociable talk—he agreed to take me out in the morning, with my prty.

Q. So he took the rest of the party out—he took all the party out?

A. Yes, sir, he took all the party out.

Q. How far did you go from Kempner's?

A. I don't know. It was about a three hours' ride, I should judge.

Q. You rode horseback?

A. Yes, sir; we rode pretty fast. He said we would have to hurry to get back before sundown.

Q. Did you talk with Mr. Downs as to what you were going to do with this land? A. No, sir.

Q. He didn't ask you? A. No, sir.

Q. He had the six claims in mind, before you started, that he was going to locate you on, didn't he?

A. I presume he knew where he was going; I presume he knew. There wasn't six of us in the party. Mr. Schmelzel, the morning we was to start—he was at that time manager of the electric light plant, and the plant broke down, or something, which compelled

(Testimony of Joseph Sullivan.)

him to stay here, and so his wife went, and there was just five of us in the party that located.

Q. I understood you to say that he said, the afternoon before you started, that he didn't have any claims, and I assume that later, after your little buffet talk, he said he had some claims that he had selected for somebody else.

A. That was it, yes, sir.

Q. And he took the party out, and located you on five claims?

A. Yes, sir, he stated that he didn't know just that he had the lines correctly run on enough claims to locate the entire party, and that he could handle a couple, but I refused to take any part of the claims unless the whole party was located, the five.

Q. Then you were located in a bunch, that is, all the claims were contiguous.

A. That is what I understood. He drove us around the corners, and stated, "This is your corner," and the trees were chipped, rather the bark was, and writing put on at the various corners.

Q. Then you came back? A. Yes, sir.

Q. Did you pay him the fee while you were up there? A. No, sir; I did not.

Q. Did he give you a description of the property while you were there, write out a description of the property?

A. Yes, sir, I asked him for it that evening.

Q. Did he write the descriptions of the five pieces of property that had been located that day on one piece of paper?

(Testimony of Joseph Sullivan.)

A. No, sir; I think he gave each party their separate description; that is my remembrance.

Q. Did you offer to pay him the locating fee there?

A. No, sir; I told him that I didn't have money enough to pay him, that when he would come down I would pay him.

Q. Did he tell you to pay him when he came?

A. Yes, sir.

Q. Did you pay him or somebody else?

A. I paid him.

Q. Did you know Mr. John I. Wells at that time?

A. I don't think I knew Mr. Wells at that time.

Q. Did Mr. Wells go over these claims with you at that time?

A. No, sir; not to my knowledge.

Q. Did you ask Mr. Wells to go over them with you so that he might be a witness?

A. No, sir; I don't think so.

Q. Wouldn't you know it if you did?

A. I don't remember just exactly who the witnesses were. As near as my recollection of meeting John I. Wells was in Mr. Dockery's office. He was an attorney and I went up to see Mr. Dockery on some business, and he introduced me to Mr. Wells. Wells.

Q. Was it with reference to this land?

A. No, sir; it was on another matter.

Q. And Mr. John I. Wells looked pretty much the same as he does now?

A. Yes, sir; about the same.

(Testimony of Joseph Sullivan.)

Q. If Mr. Wells had been going along with you over the land that day you would remember it?

A. No, sir; he wasn't there with us.

Q. Did you all come back in a party?

A. Yes, sir, camped along the road; we took three or four days to come back, camping and fishing and shooting.

Q. How long after you returned to Boise did you have your papers made out and file them in the land office?

A. It was quite awhile. I don't know just the exact date, but it was quite awhile after I returned that I made out my papers.

Q. Did you make your papers out, or did you have somebody else make them out for you?

A. No, I think Mr. Pritchard made the papers out.

Q. How long after you went over this land, as best you can remember, was it that you filed your papers in the land office? You said quite awhile.

A. I presume sixty days or more—maybe it was more.

Q. Weren't you afraid somebody else would take up your claims in the meantime?

A. When I went up and examined the claim, I wasn't thoroughly satisfied with it. After going over it, it looked to me that it was a very bum proposition. And I then got information from other parties that timber on the Payette was better timber and that there was still chances up there to take up a claim, and I didn't want to use my right there if I

(Testimony of Joseph Sullivan.)

had a chance to get a better claim.

Q. Then, as a matter of fact, you didn't care whether somebody else did take it up.

A. No, sir, I did not; for I wasn't overly stuck on the timber.

Q. Did you file at the same time the others did, or did they file before you did?

A. I think they filed before I did; I wouldn't state positively, but I think they did.

Q. How did you come to go to Mr. Kinkaid's office to have him prepare these papers?

A. Mr. Kinkaid and I was personal friends. We had been in the mining business before and since. I knew Kinkaid very well, and, in fact, used to go to him for a great deal of legal advice in regard to different matters, which I got free gratis, I presume.

Q. Then you went to the land office with this sworn statement, which you say he prepared for you?

A. I think either him or Mr. Pritchard prepared it; I think it was either him or Mr. Pritchard.

Q. Did you know Mr. Pritchard at that time?

A. I met Mr. Pritchard in Mr. Kinkaid's office one day when I was in there.

Q. And in due course you proved up?

A. Yes, that is, after I found out then that other parties had taken up every available piece of the timber on the Payette, and that there was practically no more timber up in this portion of the country, and that if I wanted any I would have to go down to Portland if I wanted to locate, I thought I would take a chance on this timber up here.

(Testimony of Joseph Sullivan.)

Q. Was it then that you paid Mr. Downs this \$25?

A. No, sir; I think I didn't see Mr. Downs until away in the fall.

Q. After you proved up?

A. Yes, sir. I met Mr. Downs—I didn't see him—I know it was way late that I met Mr. Downs. He had come down from the hills; he had been down several times before that, but I had never met him, and I met him one day on the street, and asked him how much I owed him, and I think he told me \$25, and I paid him.

Q. Do you remember the occasion of your making your final proof in the land office?

A. No, sir; I don't.

Q. You remember being there for that purpose, don't you? A. Yes, sir.

Q. Do you remember how much you paid in the land office that day?

A. I think I paid four hundred and some odd dollars.

Q. Were you alone that day, when you paid that?

A. I think my wife was with me, if I am not mistaken.

Q. She took up a claim at the same time, didn't she? A. Yes, sir.

Q. Did you pay the expenses for your wife?

A. Yes, sir.

Q. You paid the money for her to file?

A. Yes, sir.

Q. Do you remember whether you paid it in check or in cash? A. I paid it in cash.

(Testimony of Joseph Sullivan.)

Q. Can you remember where you got the money with which you paid it?

A. Yes, I absolutely know where I got the money.

Mr. BUNDY.—He wanted to know where you stole it from.

Mr. GORDON.—Q. Do you mind telling where you got the money with which you proved up?

A. I got it from various buildings around town here; I was in that business.

Q. Did you have it in the bank?

A. No, I didn't have it in the bank; I had it in my pocket.

Q. That was eight hundred and some odd dollars?

A. I had something like twelve hundred in my pocket that day.

Q. Do you know how long you had had that money in your actual possession?

A. Sometimes I got down a good deal lower than that, but I know generally I had seven or eight hundred in my possession.

Q. You had an account at the First National Bank at that time?

A. I think I was doing my business there, but I don't remember; I have done my banking in three or four different banks in this city.

Q. How long had you had this money in your pocket? You say you got it from your buildings. Did you collect it that day, or several days before, or when?

A. I don't think I collected it that day; in fact I know I didn't—I didn't have time that morning.

(Testimony of Joseph Sullivan.)

I had that money in my possession.

Q. You didn't draw any part of it out of the bank? A. Not that I know of.

Q. And how much did you think this land was worth at that time, Mr. Sullivan?

A. I thought it was worth a good deal more than what it was.

Q. I notice that in your final proof, to the question: "What is the estimated market value of the timber standing upon this land"? the answer was "\$5000 or \$6000."

A. I told that lady that, and said that if you wanted to make match-boxes out of it, it would probably be worth that, but the lady didn't put that down. I didn't notice that question. She asked me, "How much do you think it is worth"? And I told her, "If a fellow wanted to make match-boxes out of it, it would probably be worth \$5000 or \$6000," and I believe to this day that there is timber enough on there to be worth that.

Q. For making match-boxes?

A. Well, and other boxes, too.

Q. This question I asked you, "How long had you had the money in your actual possession"? was prompted by a question that I noticed was asked in the land office. Question 17, in the cross-examination which you have identified as being signed by you, "Where did you get the money with which to pay for this land, and how long have you had same in your actual possession"? And the answer was: "Earned it in my business; have had it three years."

(Testimony of Joseph Sullivan.)

Mr. BUNDY.—I object to that as incompetent, irrelevant and immaterial, and as being a question which the land office had no business asking, and utterly incompetent, irrelevant and immaterial.

A. I presume that in stating that amount I meant that I had had that much money for the last three or four years.

Mr. BUNDY.—You didn't understand that you were testifying that you had had those identical bills for three or four years, did you?

A. No, sir.

Mr. GORDON.—How long after you made your final proof, did you start negotiations for the sale of this land?

A. Well, I couldn't state that exactly; it seems to me it was quite awhile. There was a gentleman here that was trying to buy timber at that time and he came to see me about it; in fact there was two or three.

Q. Who were these gentlemen?

A. One was Mr. D'Arcy.

Q. And he came to see you after you made final proof?

A. He was talking to me, yes, on the subject of timber. He asked me if I had taken up any timber and I told him yes.

Q. Did he make you an offer for it?

A. No, he wanted to tie the timber up some way himself, and get it tied up under an option.

Q. Who was the other person that spoke to you about it?

(Testimony of Joseph Sullivan.)

A. I think Mr. Bayhouse spoke to me about selling my claim, and Mr. Eagleson at that time was trying to buy some claims, and he spoke to me about it.

Q. And you did sell? A. Yes, sir.

Q. To whom did you sell?

A. I sold to the representatives of Mr. Moon, I think it was, that they stated was buying.

Q. And the deed runs to Horace S. Rand.

A. Rand, I mean, instead of Moon.

Q. Did you know Mr. Rand?

A. I never met him, no, sir.

Q. Do you know who was transacting the business here for these parties, Moon or Rand, or whoever it was?

A. I heard that Kinkaid was buying timber; I heard that D'Arcy was buying timber for another party, and that Eagleson was buying for himself, and that Bayhouse was buying for himself.

Q. What Eagleson was that?

A. I think Mr. Harry Eagleson.

Q. Did you go to see Mr. Kinkaid about this?

A. I spoke to Mr. Kinkaid when I met him on the street—just run into him—I spoke to him about it, and asked him if he was buying timber, and he said “Not at the present time.” I told him that I had some claims to sell, that I had two, my wife and I had.

Q. How long after that was it that you sold to him?

A. That is what I couldn't remember.

(Testimony of Joseph Sullivan.)

Q. Was it a week, or a month, or two months, or three months, or how long?

A. Well, it was a week, I think—I don't know—I couldn't remember those things. I dismissed the timber business from my mind altogether, forgot it, and never paid no more attention to it.

Q. At that time did you know Mr. Kinkaid was buying for somebody else?

A. I heard a rumor on the street that he was buying for some person.

Q. Then, I think you said you thought it was at least a week after you had that conversation with him before you sold to him.

A. I don't know as it was a week; it may not have been long. I don't know just exactly how long it was. It seems to me it was longer than a week since I had the talk with Kinkaid about the timber. I had talked a good deal about the timber after I went up there and examined it, in trying to find out where the best timber was.

Q. Had you talked with Mr. Kinkaid about that?

A. I had talked to Mr. Kinkaid some about timber, yes, sir.

Q. What was the occasion that brought this sale to a climax? Did you go to see him again, or did he come to see you?

A. No, sir; I went to see him again. I had talked to D'Arcy quite awhile in regard to the matter, and he seemed to want to get an option on the thing, and Mr. Eagleson, I have forgotten just exactly what he stated, but it seemed to me that the best bargain I

(Testimony of Joseph Sullivan.)

could drive on the timber was from Kinkaid.

Q. How much did he offer you for it?

A. I think he offered me \$800.

Q. Did you sell it for \$800?

A. I think I got \$850; I wouldn't swear whether I got \$850 or \$900, but he said I was getting more for the timber than any other person.

Q. Was that the second time you talked to him about it?

A. I had talked to Mr. Kinkaid on several occasions; a couple of evenings I went up to visit him, and talked the matter over in his room casually, not about timber exactly, but about other matters pertaining to the mining business. I was in the mining business, and am in it now, and I liked to talk to Kinkaid about mining matters, and occasionally we would speak about other matters of interest that was around at that time.

Q. You finally accepted his offer?

A. Yes, sir.

Q. How long after you accepted his offer did you make the deed?

A. I don't think it was very long. I don't know.

Q. Was it the same day, or was it a week, or several weeks?

A. I don't think it was the same day.

Q. What is your best recollection of how long it was?

A. I couldn't say; I have no knowledge of what the length of time was.

Q. Did Mr. Kinkaid prepare the deed?

(Testimony of Joseph Sullivan.)

A. I think Pritchard prepared it. I don't know.

Q. In whose office did you settle for it?

A. I think I settled for the deed and signed the deed in Kinkaid's office. That is my best recollection.

Q. Did you go out and acknowledge it before Pritchard, or did he come into the office?

A. No, I think they sent for Pritchard.

Q. Was your wife there at that time?

A. I believe so, yes, sir.

Q. And you made the negotiations for your wife's property at the time you were negotiating for your own? A. Yes, sir.

Q. Did you both convey in one deed, or was it two deeds?

A. I couldn't say; I think it was one deed though. I know I gave her her pro rata of it and told her to do what she wanted to with it.

Q. Did you receive the money for this property in cash or in check?

A. That is something I can't state, whether I received it in cash or by check, but I think I received it in cash.

Q. Did you deposit that in the bank, or did you keep it about you?

A. I kept it on my person quite awhile. I was paying out money right straight along. I had under course of construction at that time the City Hospital, and the First National Bank building, and the Pierce building, and the Merino block—all of those buildings were under course of construction at that time—

(Testimony of Joseph Sullivan.)

I had five different buildings in course of construction at that time.

Q. You needed a good deal of cash about you.

A. Yes, sir; there was a good many men getting discharged every day, and I paid them in cash. The stone-cutters' organization refused to take checks; they wanted collateral.

Q. Did you ever make more than the one deed for this, or were you requested to make another deed?

A. No, sir; I only made one deed; that is my recollection.

Q. Did you read the deed over before you signed it?

A. I think I did, yes, sir.

Q. Was the deed made just as it is now, with the names in it, or were the names and dates left blank?

A. I think the names were in it.

Q. Was the consideration of \$2000 in the deed at that time?

A. I think it was, yes, sir.

Q. And you didn't say anything about receiving \$850 or \$900? You didn't mention that and the consideration of \$1000 a claim being put in it?

A. That was none of my business. I considered that that was Kinkaid's business, what he put in there.

Mr. GORDON.—We offer in evidence the timber and stone land sworn statement, identified by Joseph Sullivan, dated February 12, 1903; the testimony given by Mr. Sullivan on final proof, which he has identified; also the cross-examination attached, identified by Mr. Sullivan; the testimony of the other witnesses on final proof; the receiver's and register's

(Testimony of Joseph Sullivan.)

certificates, dated May 7, 1903; the deed, dated May 14, 1903, and made by Joseph Sullivan and wife Helen, to Horace S. Rand, consideration \$2000, the deed also identified as being signed by Mrs. Sullivan; and certified copy of the patent, dated July 2, 1904; all to the northeast quarter of section 27, in township 7 north of range 8 east, Boise Meridian. The deed also conveys the northwest quarter of section 22, in township 7 north of range 8 east, Boise Meridian.

(Marked Plaintiff's Exhibit No. 87A to 87K, inclusive.)

Cross-examination.

(By Mr. BUNDY.)

Q. Mr. Sullivan, I understood you to say that Mr. Downs, when first asked to locate you, was of the opinion that he hadn't enough land to locate your party?

A. Yes, sir.

Q. Did you understand that Mr. Downs was naming the particular tract that you had to take, or did you understand that the selection was left with you?

A. The selection was entirely left with us.

Q. Mr. Downs was acting as your employee, wasn't he?

A. Yes, sir. I was absolutely going to refuse to pay Downs if I didn't take up that piece of timber.

Q. You say you think Mr. Pritchard made out the papers?

A. I think he did, yes, sir.

Q. Did you go to Pritchard's office, or how did he happen to make them out?

A. No, sir, I paid Pritchard for making out the papers; he is an attorney.

(Testimony of Joseph Sullivan.)

Q. He was a practicing attorney at that time?

A. Yes, sir.

Q. You spoke of the Eaglesons and Bayhouses buying claims. To refresh your recollection, Mr. Sullivan, wasn't Mr. Eagleson and Mr. Bayhouse sort of getting up a pool among the entrymen, to put the land in a bunch and hold it for a higher price?

Mr. KEIGWIN.—If you know, Mr. Sullivan.

A. I don't know that. That is—now, the Bayhouses seemed to be buying for themselves, as I understood, and the Eaglesons for themselves.

Mr. BUNDY.—Q. Was that a report that you heard, or did they personally come to you?

A. Mr. Bayhouse came to me and asked me if I wanted to sell my timber claims.

Q. Did you hear, about that time, of the Eaglesons and the Bayhouses getting up a pool and asking a higher price?

Mr. KEIGWIN.—That is objected to as calling for hearsay evidence.

A. There were some rumors on the street that they were trying to do that, yes, sir.

Mr. BUNDY.—Q. Did that rumor connect the Eagleson and Bayhouse families with the pool?

A. No, sir.

Q. You didn't hear about that? A. No, sir.

Q. So that neither Mr. Eagleson nor Mr. Bayhouse made you any price, negotiated with you, tried to buy your claim, any more than asking you if you wanted to sell?

A. Yes, sir, asked me if I wanted to sell them.

(Testimony of Joseph Sullivan.)

Q. And from that you assumed that they were buying? A. Yes, sir.

Q. I ask you that particularly because Mr. Eagleson and Mr. Bayhouse were instrumental in getting up a pool; they were getting up a crowd to stand together on the price.

A. I presume that was maybe what they were trying to do. I know they came to me and broached me on the subject, but I didn't know that the Eaglesons and the Bayhouses were together.

Q. Calling your attention to the consideration named in this deed of \$1000, when you were paid \$850 or \$900, you understood, did you not, that Mr. Kinkaid was buying these claims and turning them over to Rand?

A. Yes, I understood he was an agent for some person.

Q. Mr. Kinkaid never told you that he was an agent for Mr. Rand, did he? A. No, sir.

Q. Did Mr. Kinkaid tell you that he was buying those timber claims himself and selling them?

A. He didn't tell me that, but I didn't ask no questions in regard to the matter.

Q. You don't mean to say that Mr. Kinkaid or anybody else told you that Mr. Kinkaid was buying these as an agent of Rand?

A. No, sir, I do not. I knew he was an agent, or buying timber; I heard he was, and went there and seen him, and I didn't know whether John was buying for himself or who he was buying for; that was none of my business.

(Testimony of Joseph Sullivan.)

Q. So far as your personal knowledge is concerned, he was buying claims and taking the deed in the name of Rand? A. Yes, sir.

Redirect Examination.

(By Mr. KEIGWIN.)

Q. How long have you been in Boise?

A. About ten years.

Q. You are still living here?

A. Yes, sir; I am in the mining business and building business.

Mr. GORDON.—Q. I believe your wife is dead, Mr. Sullivan? A. Yes, sir, four years ago.

Q. I show you timber and stone land sworn statement, signed Helen Sullivan, dated February 12, 1903, and ask you if that is your wife's signature to that? A. Yes, sir.

Q. And also to the non-mineral affidavit, dated February 12, 1903, that is your wife's signature?

A. Yes, sir.

Q. And the testimony of Helen Sullivan, given on final proof, dated May 7, 1903?

A. That is her signature.

Q. And to the cross-examination attached?

A. That is her signature.

Q. And to the deed we have offered in evidence, you identified her signature to that?

A. Yes, sir.

Q. And I understood you to say that you conducted all the negotiations for your wife at the time you conducted the negotiations for the sale and locating of your own property? A. Yes, sir.

(Testimony of Joseph Sullivan.)

Mr. GORDON.—We offer in evidence timber and stone land sworn statement of Helen Sullivan, dated February 12, 1903; the non-mineral affidavit, dated February 12, 1903; the testimony of Helen Sullivan, given on final proof, dated May 7, 1903; the cross-examination attached, all of which have been identified by Joseph Sullivan as having been signed by his wife; the other papers given on final proof of Helen Sullivan; all to the northwest quarter of section 22, township 7 north of range 8 east, Boise Meridian.

(Marked Plaintiff's Exhibit No. 88A to 88N, inclusive.)

Mr. BUNDY.—In addition to the regular objection which applies to all of these parties, defendant objects to these particular papers, for the reason that the same have not been properly identified, as incompetent, irrelevant, and immaterial, and not tending to prove or disprove any of the issues made by the pleadings in this case.

Mr. GORDON.—We also offer in evidence certified copy of the patent to the property just described, dated July 2, 1904.

Recross-examination.

(By Mr. BUNDY.)

Q. It appears that your deed which you have identified here was dated and executed one week after you made your final proof. Did you have any negotiations with anybody or with Kinkaid relative to the sale of this land before you made final proof?

A. No, sir.

(Testimony of Joseph Sullivan.)

Q. At the time you made your original filing on this land, and filed your application to purchase, was there any outstanding agreement between you and any of the defendants in this action, or any other person, by which any person, firm, or corporation were to acquire any interest in the land or the title you might acquire from the Government?

A. No, sir.

Q. Was there any such agreement at the time you made final proof? A. No, sir.

Q. It is alleged in this complaint, Mr. Sullivan, that you entered into a conspiracy to defraud the United States out of the land you entered, and that you entered it for the benefit of the Barber Lumber Company or some of the other defendants. Is that true or false?

A. As far as I am concerned, it is false.

Q. And it is alleged that, for this purpose, you went to the land office and deliberately perjured yourself, for their benefit. Is that allegation true or false? A. That is false.

(Witness excused.)

[Testimony of Mrs. Mary Thompson, on Behalf of Complainant.]

Mrs. MARY THOMPSON, produced as a witness on behalf of the complainant, being first duly sworn, testified as follows:

Direct Examination.

(By Mr. GORDON.)

Q. You are Mrs. Mary Thompson?

(Testimony of Mrs. Mary Thompson.)

A. Yes.

Q. And is your husband living, Mrs. Thompson?

A. Yes, sir.

Q. His name is Thomas S. Thompson?

A. Yes, sir.

Q. Do you know whether he took up a claim under the Timber and Stone Act? A. He filed.

Q. Do you know whether he ever proved up?

A. He did not.

Q. You filed on a timber claim in 1902, did you?

A. I did.

Q. How long have you lived in Boise, Mrs. Thompson?

A. About thirteen years, I think.

Q. Are you in business yourself?

A. No, sir.

Q. What is your husband's business?

A. Well, he works for the city at present.

Q. In what capacity?

A. Cleaning the streets.

Q. What was his occupation in 1902?

A. Well, he wasn't able to work at that time; he wasn't working at all.

Q. Did you do any work at that time?

A. No, sir.

Q. You took up a claim under the Timber and Stone Act in 1902? A. Yes, sir.

Q. I show you timber and stone land sworn statement, dated September 16, 1902, and ask you if that is your signature to that paper? A. Yes, sir.

Q. I show you non-mineral affidavit, dated Sep-

(Testimony of Mrs. Mary Thompson.)

tember 16, 1902, and ask you if you signed that paper? A. Yes, sir.

Q. I show you testimony given on final proof by Mary Thompson, dated January 23, 1903, and ask you if that is your signature to that paper?

A. Yes, sir.

Q. I show you the cross-examination attached, and ask you if that is your signature?

A. Yes, sir.

Q. I show you deed, dated February 11, 1903, signed by Thomas S. Thompson and Mary Thompson, and ask you if that is your signature to that deed? A. Yes, sir.

Q. Is that the signature of your husband?

A. Yes, sir, I believe it is.

Q. Mrs. Thompson, who first spoke with you about taking up a timber and stone claim?

A. My husband.

Q. What did he say to you about it?

A. He asked me if I would like to take up a claim, and I said, if I had that right, I should like to.

Q. Did he tell you how much it would cost you?

A. No, sir, I don't remember that he did.

Q. Did you know how much it was going to cost you?

A. No, not when he spoke to me about it I didn't.

Q. Did you know where you were going to get the money with which to pay for this claim?

Mr. BUNDY.—I object to that as incompetent, irrelevant, and immaterial.

(Testimony of Mrs. Mary Thompson.)

A. Not at that time, that is, not to prove up with, I didn't.

Q. Did you know where you were to get the money to pay the locator?

A. Yes, sir, I had that.

Q. And did your husband tell you how much you could make out of it?

Mr. BUNDY.—I object to that as incompetent, irrelevant, and immaterial, and calling for hearsay evidence.

A. No, sir, he did not.

Q. Did you know Mr. John I. Wells at that time?

A. I did not.

Q. Did you know Mr. Patrick Downs?

A. No, sir.

Q. Did you know Mr. John Kinkaid?

A. No, sir.

Q. Did you know Mr. Louis M. Pritchard?

A. No, sir.

Q. How long after your husband spoke with you did you make arrangements to locate on this land?

A. Well, sir, I don't remember that; I don't know how long it was.

Q. Did anybody else say anything to you about it, between the time your husband first spoke to you and the time you did go to locate on this land?

A. No, sir.

Q. Did you and your husband go together?

A. Yes, sir.

Q. To be located? A. Yes, sir.

Q. Did anyone else go with you?

(Testimony of Mrs. Mary Thompson.)

A. Yes, sir, I think there was six in the party.

Q. Who were they? A. Mr. Rose—

Q. What is his Christian name?

A. I don't know his given name.

Q. Who else? A. And Mr. Hansen.

Q. Do you know his Christian name?

A. I do not; they were strangers to me, and I don't know—and Mr. Bliven and Mr. McDonald, I believe.

Q. Was it Mr. Frank R. McDonald?

A. I think they called him Frank.

Q. Where did you start from?

A. From the Pacific Hotel.

Q. And who arranged for this party?

A. I don't know who arranged for the party.

Q. You went to the Pacific Hotel to start?

A. I went to the Pacific Hotel with my husband.

Q. And you didn't know any of the party until you got there?

A. No, sir, I wasn't acquainted with any of them.

Q. Do you know Mr. John I. Wells now?

A. I have met Mr. Wells, yes.

Q. Did you see him the morning you started?

A. No, sir.

Q. Where did you go to view this land that you located on?

A. I don't know whether I can tell you exactly or not.

Q. Did you go to Kempner's ranch?

A. Yes, I went to Kempner's ranch.

Q. Do you know who drove the team for you?

(Testimony of Mrs. Mary Thompson.)

A. My husband drove the team most of the time.

Q. Did you know who was to locate you before you started? A. I did not.

Q. Did you meet anyone at Kempner's ranch who did locate you? A. Yes, sir.

Q. Who did you meet? A. Mr. Downs.

Q. And he took you out to this land?

A. Yes, sir.

Q. How far was it from Kempner's ranch?

A. I couldn't tell you just how far—perhaps two or three miles.

Q. Did you walk?

A. No, I rode horseback.

Q. How long were you going out there from Kempner's ranch?

A. Well, I think a little over half a day, from the time we started until we got back.

Q. Do you remember what time of day you started from Kempner's ranch?

A. In the morning, I think.

Q. What time in the morning?

A. I don't know just what time in the morning.

Q. Was it six o'clock or ten o'clock.

A. I think it was after six and before ten. I can't tell you exactly; I don't remember just what time of day it was, but it was before noon.

Q. Did you have any talk with Mr. Downs about his locating you? A. No, sir, I didn't.

Q. Did all of the party go along with Mr. Downs?

A. Yes, sir.

Q. And did he point out a claim to you and say,

(Testimony of Mrs. Mary Thompson.)

“This is the claim for you, Mrs. Thompson,” or what did he do when you got to the claim you were located on?

A. I don’t know exactly; there were three claims right there, and then I didn’t go any further.

Q. Were you the first one that was located?

A. I and my husband and another one—I can’t tell you which one—located those three claims.

Q. Did Mr. Downs say anything when you got to the claim as to whose it was or who was to locate on it?

A. No, sir, I don’t think so.

Q. How did you know which one you were to take?

A. He showed me when we were there.

Q. And you took the one he showed you?

A. Yes, sir.

Q. Did he give you a description of it then?

A. No, sir.

Q. Was the locating fee paid to Mr. Downs at that time?

A. No, sir, I don’t think so.

Q. And did the party you went with return as a party to Boise?

A. Yes, sir.

Q. And did you see Mr. Wells up there on that occasion?

A. No, sir.

Q. Did he go with you over the land?

A. No, Mr. Wells didn’t; he wasn’t there, I don’t think.

Q. Did Mr. Downs tell you how much this claim was going to cost you, for his services?

A. No, he didn’t tell me; he might have told my husband; I don’t know.

Q. Did you take the money along with you to

(Testimony of Mrs. Mary Thompson.)

pay? A. My husband had it.

Q. Did he direct you to go to someone's office to have your papers prepared?

A. I don't know whether he did or not. He didn't direct me; he might have spoken to my husband about it.

Q. Did you go to someone's office to have your papers prepared?

A. Yes, sir, we went to Mr. Wells' office.

Q. Was that the day after you came back?

A. I think it was.

Q. Did the entire party go up there to Mr. Wells' office to have their papers prepared?

A. I am not sure whether they did or not.

Q. Who of the party were at Mr. Wells' office when you were there?

A. I don't remember. Mr. Thompson went with me, and I don't remember whether any of the other parties were there that day or not.

Q. And you had never met Mr. Wells before that?

A. No, sir, not till that day.

Q. Do you know whether or not Mr. Wells had the description of this property when you went there?

A. I think he had it in his office.

Q. Did you ask him to prepare the papers for you? A. I don't know that I did.

Q. Did he have the papers prepared for you, or did he send you somewhere else?

A. I think they were prepared there in his office.

Q. He had them there when you got there?

(Testimony of Mrs. Mary Thompson.)

A. I think so—I am not sure.

Q. Did you pay him anything for preparing your papers?

A. I don't remember; I didn't; I don't know whether my husband did or not.

Q. Do you know whether your husband paid the locating fee there for Mr. Downs?

A. Yes, sir, I think he paid it there that day to Mr. Wells.

Q. And your best recollection is that this sworn statement I have shown you, and this non-mineral affidavit, the first papers that you filed in the land office, that you received them in Mr. Wells' office, and that they were there when you got there?

A. I think they was.

Q. And then you and your husband went to the land office? A. Yes, sir.

Q. And did you pay any fees at the land office—\$7 or \$12—the first time you went there?

A. I think I paid \$7.50; I am not sure now, but I think that is what I paid.

Q. And how long had you been in Idaho before you located on this land?

A. Well, we have been here about thirteen years; it has been seven years, I think, since we located.

Q. Where did you come from originally?

A. From Washington to Idaho.

Q. State of Washington? A. Yes, sir.

Q. Where did you live before you went to the State of Washington? A. In Iowa.

Q. Do you remember the occasion of going to

(Testimony of Mrs. Mary Thompson.)

the land office and making your final proof?

A. Yes, sir.

Q. Do you remember how much money you paid at that time?

A. I think it was \$412 or \$412.50; I am not sure which.

Q. Did you pay that money in check or in cash?

A. In cash.

Q. Do you know how long you had had the money?

A. Why, I borrowed \$400; I just had that the day before, I think.

Q. Who did you borrow it from?

A. Mr. Wells.

Q. From Mr. John I. Wells? A. Yes, sir.

Q. The gentleman sitting there (pointing)?

A. Yes, sir.

Q. You borrowed it the day before?

A. I don't know whether it was the day before, or a day or two before.

Q. Was that the first time you had ever met Mr. Wells? A. The day after we got back to Boise.

Q. Did Mr. John I. Wells tell you on that occasion that you could borrow the money?

A. Mr. Thompson made arrangements for the money; I didn't go to Mr. Wells myself.

Q. I mean when you and Mr. Thompson were at Mr. Wells' office when you got these first papers.

A. Yes, sir.

Q. Did he tell you on that occasion that you could get the money with which to make final proof?

(Testimony of Mrs. Mary Thompson.)

A. No, sir, he didn't.

Q. Did you ask him? A. I didn't.

Q. Did Mr. Wells come to you to give you this \$400? A. No, sir.

Q. Did you go to his office to get it?

A. No, sir.

Q. You say your husband went there and got it?

A. He made arrangements for the money and then sent me the money down.

Q. Who did he send it by?

A. I think by Mr. Dean West.

Q. Did you give Mr. Dean West a note for it?

A. I give a note to Mr. Wells, yes.

Q. Do you mean that you wrote a note, or did you give him a note of security?

A. Yes, a note of security.

Q. Do you remember when you were to repay that money? A. I do not.

Q. Had you talked to Mr. West about this before you located?

A. No, sir, I never had said anything to Mr. West about it.

Q. You knew Mr. West?

A. Yes, sir, we was neighbors.

Q. Did you talk to Mr. West about getting this money? A. No, sir, I didn't.

Q. Your husband attended to that?

A. Yes, sir.

Q. Did Mr. West tell you what you must say when you went to the land office and paid that money in as to whether or not that was your own money or

(Testimony of Mrs. Mary Thompson.)

not? A. No, sir.

Q. And that \$400 was given to you by Mr. West the day that you made your final proof, or the day before? A. I think it was the day before.

Q. There wasn't anything said as to who you should say you received that money from?

A. No, sir.

Q. Do you remember, when you went to the land office, where you told them you received that money?

A. Yes, sir.

Q. Where did you tell them?

A. I told them it was an estate.

Q. That you had gotten it from your father's estate? A. Yes, sir.

Q. And had had it for three years?

A. Yes, sir.

Q. Did someone tell you to say that?

A. No, sir.

Q. And did you have that money from your father's estate?

A. I had some of it left; that was what I had for the other expenses.

Q. You had about \$50 left of it?

A. I think I had more than \$50; I think I had about \$90.

Q. Do you remember this question being asked you, when you made your final proof: "Have you kept a bank account during the past six months, and if so, where?" A. I don't remember.

Q. Do you know whether you made this answer: "No. Sometimes I have had it loaned out and some-

(Testimony of Mrs. Mary Thompson.)

times have it at the house?"

A. Well, I guess I did make that answer. I don't remember the question, though.

Q. Now, weren't you told, before you went up to look at this land, that you could locate on it, and afterwards turn it over to somebody and get \$250 over and above all expenses? A. No, sir.

Q. Nobody ever told you that? A. No, sir.

Q. Did Mr. West speak with you about this timber land before you located?,

A. No sir, I never talked to Mr. West about it before.

Q. You never talked to him about it until the day he brought you the \$400?

A. Then there wasn't anything said about it, only he just brought me the money and the note to sign.

Q. And you knew what you were getting it for?

A. Yes, sir, because my husband had made arrangements for it.

Q. And he told you where he was getting it from? A. Yes, sir.

Q. And you signed the note to Wells?

A. Yes, sir.

Q. That was in January, 1903, the day you made your proof? You made your final proof January 23, 1903?

A. I didn't remember the date.

Q. How long after that was it that you were asked to sell this property?

A. After I made my proof?

Q. Yes.

(Testimony of Mrs. Mary Thompson.)

A. I am not sure—two or three weeks.

Q. Now, was it a note or a deed that you signed for Mr. West that day?

A. It was a note.

Q. And then who spoke to you about selling this land?

A. Mr. Kinkaid met Mr. Thompson on the street and told him that when he got ready to sell, he would take it.

Q. And then you went to Mr. Kinkaid's office?

A. Yes, sir.

Q. And made a deed for it? A. Yes, sir.

Q. And was the deed prepared when you got there?

A. I don't think it was—I am not sure.

Q. How long were you at Mr. Kinkaid's office?

A. I don't know—perhaps half an hour.

Q. Was Mr. John I. Wells there?

A. No, sir.

Q. And your husband was with you?

A. Yes, sir.

Q. And how much money did he pay you that day? A. \$800.

Q. Did he give you \$800? A. Yes, sir.

Q. Didn't he give you \$250?

A. No, he gave me a check for \$800.

Q. What did you do with that check?

A. I took it to the bank and got it cashed.

Q. How long after that did you see Mr. Wells?

A. I don't know whether it was the same day or the next day.

(Testimony of Mrs. Mary Thompson.)

Q. Did he come to see you, or did you go to see him?

A. I went to see him to pay that note.

Q. He gave you \$800? A. Yes, sir.

Q. Check? A. Yes, sir.

Q. On what bank was the check drawn?

A. I think it was the First National Bank.

Q. And was that the bank you had it cashed at?

A. Yes, sir.

Q. Did you know Mr. Horace S. Rand?

A. No, sir.

Q. Did you know that you were deeding this property to Mr. Horace S. Rand when you were deeding it?

A. No, sir; I supposed I was deeding it to Mr. Kinkaid; I didn't read the deed.

Q. He just presented the deed to you and you signed it? A. Yes, sir.

Q. Your husband was with you?

A. Yes, sir.

Q. You say he made original entry and didn't prove up? A. Yes, sir.

Q. Do you know why?

A. He couldn't get the money.

Q. Did he try to get it from Mr. Downs?

A. I don't know.

Q. Mr. Wells?

A. I don't know whether he did or not.

Mr. GORDON.—It will take some little time to finish with this witness.

The EXAMINER.—We would better take our

(Testimony of Mrs. Mary Thompson.)

recess then.

Mr. GORDON.—I will ask the Examiner to caution this witness not to talk with anybody about this matter in the meantime.

The EXAMINER.—I will caution you not to talk with anybody about this case between now and the time we assemble again at two o'clock.

The hearing was here adjourned until two o'clock, at which time the taking of testimony was continued, the Examiner and counsel for the respective parties being present, and Mrs. Mary Thompson resuming the stand.

Mr. GORDON.—Q. Did you tell me, Mrs. Thompson, how long after you made your final proof you attempted to sell this land?

A. I think it was about two or three weeks; I am not certain just exactly how long, but I think it was about that long.

Q. And who did you speak with about it?

A. Well, I didn't speak to anyone; that is, Mr. Thompson met Mr. Kinkaid on the street and he told him if I wanted to sell the land that he would buy it. I don't know whether those are the exact words or not.

Q. I understand that you are telling as best you can remember. Did you go that day or the next day up to see Kinkaid?

A. I don't know exactly how long—just a short time.

Q. And you sold to him? A. Yes, sir.

Q. And he gave you how much money?

(Testimony of Mrs. Mary Thompson.)

A. \$800.

Q. Did he give you a check or cash?

A. Check.

Q. Have you talked with anybody about this case? A. No, sir.

Q. Nobody has, at any time, ever asked you what you were going to swear to? A. No, sir.

Q. At no time? A. No, sir.

Q. Haven't talked with anybody here at the courthouse? A. No, sir.

Mr. GORDON.—We offer in evidence the timber and stone land sworn statement, dated September 16, 1902, signed and identified by Mrs. Mary Thompson; notice of publication of the same date; the non-mineral affidavit, dated September 16, 1902, identified by Mrs. Thompson as having been signed by her; the testimony of Mary Thompson given on final proof, dated January 23, 1903, and identified by Mrs. Thompson; the cross-examination attached, signed by Mrs. Thompson, and also identified by her; and the deed, dated February 11, 1903, by Thomas S. Thompson and Mary Thompson, to Horace S. Rand, consideration \$900; the register's and receiver's certificates, dated January 23, 1903; and certified copy of the patent, dated March 24, 1904; all to the east half of the northwest quarter, lots 1 and 2, section 19, township 7 north of range 8 east, Boise Meridian.

(Marked Plaintiff's Exhibit No. 89A to 89O inclusive.)

(Testimony of Mrs. Mary Thompson.)

Cross-examination.

(By Mr. BUNDY.)

Q. Just a few questions, Mrs. Thompson. I think you stated that after you had been up and looked at the timber and came back, that you and your husband went to Mr. Wells' office, where some papers were made out? A. Yes, sir.

Q. And you were asked as to whether or not those papers were already prepared when you got there. Do you know whether they were or whether they were made out after?

A. I am not sure; I think they made them out after we got there.

Q. At the time you entered this land—and by that I mean the time you filed your first papers in the land office—had you had any talk with anybody at all about selling it? A. No, sir.

Q. Had anybody offered to buy it at that time?

A. No, sir.

Q. Had you offered to sell it at that time?

A. No, sir.

Q. Had Mr. Downs, Mr. Kinkaid, or anybody else had any talk with you at all about buying it?

A. No, sir.

Q. At the time you filed your first papers in the land office, did you have, at that time, any agreement with any person at all by which you had agreed to turn over the land to them as soon as you got title?

A. No, sir.

Q. Had you any such agreement as that at the time you made final proof and paid in your \$400?

(Testimony of Mrs. Mary Thompson.)

A. No, sir.

Q. At the time you borrowed this money from John I. Wells, was there any agreement made by which you were to sell that land to Mr. Wells, or to anybody he should name? A. No, sir.

Q. Nothing said about that? A. No, sir.

Q. It was simply a loan, that was to be paid back, and was paid back, after you sold the land?

A. Yes, sir.

Q. In your final proof, Mrs. Thompson, you said something about your father's estate. You have an interest in your father's estate, or had at that time?

A. Yes, sir.

Q. Has that been settled yet?

A. Yes, sir.

Q. At that time it hadn't been settled.

A. Yes, it had been settled at that time.

Q. You had part of the money?

A. Yes, I had part of it; I had spent part of it.

Q. This loan had nothing whatever to do with the selling of the land? A. No, sir.

Q. Mrs. Thompson, it is charged in the complaint in this action that you entered this land at the request of the Barber Lumber Company or some of the other defendants in this action. Is that true?

A. No, sir.

Q. And it is alleged in this complaint that you entered it for the benefit of the Barber Lumber Company and the other defendants, under an agreement that as soon as you got title you would turn it over to the defendants, or somebody they would direct.

(Testimony of Mrs. Mary Thompson.)

Is that true? A. No, sir.

Q. And it is alleged that, for the purpose of defrauding the United States out of certain lands, you went to the land office and testified falsely, to help the Barber Lumber Company get this land. Is that true? A. No, sir.

Redirect Examination.

(By Mr. GORDON.)

Q. Your husband's name is Thomas?

A. Thomas S. Thompson; sometimes he signs it T. S. and sometimes Thomas Thompson.

Q. Is he here? A. Yes, sir.

Mr. KEIGWIN.—Q. Where did you find Mr. Wells when you asked for the loan of this money?

Mr. BUNDY.—If you had been in here you would know that she hadn't testified that she asked him for any money.

A. Mr. Thompson made the arrangements for the money. I never met Mr. Wells, that is, to see about the money.

Mr. KEIGWIN.—Q. So you had no negotiations at all with Mr. Wells? A. No, sir.

(Witness excused.)

[Testimony of Andrew Hanson, on Behalf of the Complainant.]

ANDREW HANSON, produced as a witness on behalf of the complainant, being first duly sworn, testified as follows:

Direct Examination.

(By Mr. GORDON.)

Q. Where do you reside, Mr. Hanson?

(Testimony of Andrew Hanson.)

A. Boise.

Q. How long have you resided here?

A. Oh, I think about close to nine years.

Q. What is your occupation? A. Painter.

Q. What was it in 1902? A. Painter.

Q. Were you working for yourself at that time, or for someone else?

A. No, I worked for myself.

Q. You took up a claim under the Timber and Stone Act in 1902, did you?

A. Yes, I think I did.

Q. I show you timber and stone land sworn statement, dated September 16, 1902, and ask you if that is your signature? A. Yes.

Q. And to the non-mineral affidavit of the same date? Did you sign that?

A. Yes, that is my signature.

Q. The testimony of Andrew Hanson, dated January 15, 1903, given at the land office. Is that your signature? A. Yes, sir.

Q. And you signed the cross-examination attached? Is that your signature there?

A. Yes, sir.

Q. I show you deed, dated February 12, 1903, and ask you if you signed that?

A. Yes, sir, that is my signature.

Q. Running to Horace S. Rand?

A. Yes, sir.

Q. Do you remember who first spoke with you about taking up a timber claim?

A. No, I don't.

(Testimony of Andrew Hanson.)

Q. Did you ever talk with Mr. Patrick Downs about taking up a timber claim? A. Yes, sir.

Q. When?

A. I suppose it was in the first of 1902 sometime, or before that perhaps.

Q. Where did you see him?

A. Down at the Pacific Hotel, in Boise.

Q. Was he stopping there? A. Yes, sir.

Q. Were you stopping there?

A. Yes, sir, we both lived there.

Q. Did he address you concerning these timber claims, or did you ask him?

A. I think I addressed him in the first place.

Q. What did you ask him?

A. I asked him if he located men on timber claims; of course I had heard that he did before; of course that is the way the conversation came up.

Q. Did he tell you he did?

A. Yes, sir.

Q. Did he make arrangements for you to go to see this land?

A. Yes, he said he would later on, and after a while he said he could get me up there with somebody else.

Q. Did he tell you why you would have to go later on?

A. I think he said he wanted several, so that there would be enough to take a wagon to go up, so that the expenses wouldn't be so much; I think that is the way we talked it over.

Q. How long after that did you go?

(Testimony of Andrew Hanson.)

A. I don't remember—perhaps—I couldn't state when that was, but it was quite a little bit after, perhaps two months, perhaps three,—I don't remember.

Q. Did he tell you how much it would cost you?

A. Yes, it would cost me \$25 to locate, for cruiser fee.

Q. Did you know Mr. John I. Wells at that time?

A. Yes, I knew him slightly.

Q. Did you talk to him about it?

A. No.

Q. Then you were notified when it was time for the party to go? A. Yes, sir.

Q. By whom? A. I think Mr. John Wells.

Q. The gentleman sitting here in the room?

A. Yes, sir, that is the gentleman.

Q. What did he tell you?

A. He told me that he had some other fellows that wanted to go, and that I could go with them.

Q. That was the first time you talked to him about it?

A. Yes, as far as I remember, of any consequence.

Q. How long after you talked with Mr. Wells did you go?

A. A few days after that, I suppose.

Q. Who were of the party that went with you?

A. There was Mr. and Mrs. Thompson—

Q. The Mrs. Thompson who was just in here?

A. Yes, sir.

Q. And her husband?

A. Yes, sir—and Mr. Blivens, and Mr. Rose—I think it was Rose or Ross, I couldn't say now, but I

(Testimony of Andrew Hanson.)

rather think it was Rose—and Mr. Frank McDonald.

Q. Where did you go to?

A. We went up on Crooked River; stopped at Kempner's ranch.

Q. And how far was the claim that you located on from Kempner's ranch?

A. I couldn't exactly say, but perhaps three miles, and perhaps five; it took quite a while to go out there. We followed the Crooked River a ways, and then took a ridge and followed over, and it was quite a walk.

Q. Was Mr. Downs up at Kempner's ranch?

A. Yes, he was there when we got there.

Q. What did he do and say in locating you on your claim?

A. Why, we went up there, all of us together, and we walked from one place to another; I couldn't tell you how far we walked, but I think we located and he went further on with Mrs. Thompson, I think, on horseback.

Q. Were you the first one located?

A. No, I don't remember that.

Q. Did he have the descriptions of the claims with him when he started away from Kempner's?

A. I don't know whether he had them in his pocket when he was there on the land or not, but he said he had something to fix on the papers before we left.

Q. Did he take you to a claim and say, "This is the claim I locate you on?"

A. Yes, sir.

Q. Did he do the others the same way?

(Testimony of Andrew Hanson.)

A. Yes, sir.

Q. Do you remember just exactly what he said?

A. Why, I couldn't put it in words, I don't suppose, more than he said that this is such and such a claim, "that is the one that you want," or something like that, perhaps.

Q. Did you have any preference in them?

A. I don't remember whether I had or not.

Q. You took the claim he gave you?

A. I looked it over, and walked a couple of times across it, and I didn't think I wanted anything better than that. I didn't know whether there was any better or not.

Q. You didn't know anything about it. You just trusted to him to put you on a claim?

A. I trusted to him that it was all right. Of course I could see the timber on it—there was some good timber too.

Q. You knew you weren't buying a mine?

A. No.

Q. Did the party you went with return together?

A. Yes, I think we returned—we didn't return before the next day, but I don't remember whether we was on the claims the first day or the second.

Q. Did he give you a description of this property, or did he give it to one of the party for the rest of you?

A. I think it was all put together and one man took it along when we drove into town; that is my recollection.

Q. Where did you see the description of your

(Testimony of Andrew Hanson.)

land again?

A. Why, I think we went to some office; I don't remember where we went to from there.

Q. Where did you pay your locating fee?

A. To Mr. Downs.

Q. Did you pay it to Mr. Downs up there at that time?

A. No.

Q. In whose office did you pay it?

A. I didn't pay it in any office.

Q. You paid it to him personally?

A. Yes, sir.

Q. Didn't give it to Mr. Wells for him?

A. No.

Q. Did you go to Mr. Wells' office after you returned from Kempner's, before you filed your papers?

A. I don't remember whether we did or not.

Q. Did all of you go together, wherever you went?

A. I don't believe we all went together at one time.

Q. Do you remember of ever being in Mr. Wells' office with reference to this property?

A. Yes, I was in there once, but I don't know whether that was—I think that was before we left for the timber claims, to locate.

Q. That was before you went up there?

A. Yes, I think so; I couldn't say whether I was in there after or not.

Q. Do you know what you were in there for that time?

(Testimony of Andrew Hanson.)

A. That was to arrange for the time of leaving.

Q. How did you know that Mr. Wells was to arrange for the time for you to leave?

A. He let me know; I suppose Mr. Downs told him when we should go, and he let me know.

Q. Do you know who prepared this sworn statement for you that I showed you, and that non-mineral affidavit and notice of publication?

A. I think perhaps Mr. Kinkaid.

Q. Did you know Mr. Kinkaid at that time?

A. No, I never had seen him before.

Q. Did Mr. Downs tell you to go to see Kinkaid?

A. I don't remember whether he did or not.

Q. Did Mr. Wells?

A. Perhaps one of them.

Q. What is your best recollection about it?

A. I couldn't say; I am sure that some party told me, because I wouldn't know where to go unless I was told.

Q. Do you know whether it was Wells or Downs that told you to go there?

A. No, I couldn't tell you.

Q. Did all the rest of the party go with you to Kinkaid's office? A. Some of us was there.

Q. And that was the day after you returned from Kempner's ranch?

A. I presume; very shortly, anyway—the first day after, I think it was.

Q. And what did you say to Mr. Kinkaid when you went to his office?

A. I don't recollect what I did say; showed him

(Testimony of Andrew Hanson.)

the location for the papers, I suppose.

Q. You didn't have yours with you, did you?

A. No, but we all had them together.

Q. Do you know which one of the party had those papers? A. No, I don't recollect.

Q. You can't think which one had them?

A. No, sir.

Q. It was arranged, though, that all of you should go together with the one that had the papers?

A. Yes, I should think so; we had to be witnesses for each other.

Q. You and a number of others went to Mr. Kinkaid's office together? A. I think so.

Q. And you received this sworn statement, and the non-mineral affidavit, and that notice of publication, all dated September 16, 1902? A. Yes.

Q. Did Mr. Kinkaid charge you anything for preparing those papers?

A. I couldn't tell you for sure; I rather think we did pay something, but I couldn't swear to it.

Q. Did Mr. Kinkaid go to the land office with you? A. I don't think so.

Q. Did Mr. Wells go to the land office with you?

A. No, sir.

Q. You are sure of that?

A. Yes, I think I am; but Mr. Downs, I think, went with us.

Q. Not the first time you went, did he?

A. No, perhaps not; I don't remember that.

Q. Do you know how much money you paid in the land office the day you went there, on the first

(Testimony of Andrew Hanson.)

occasion?

A. I think it was something like \$12.

Q. Did you know what Mr. Wells' business was, before you filed? A. Yes, sir.

Q. What was it?

A. He was supposed to be agent for selling timber and so on.

Q. Do you know who he was representing?

A. No, I didn't know who he was representing.

Q. Did you understand at that time that you were to turn your claim over to him?

A. Perhaps I thought I could sell it to him, yes. I knew he was in that business, and heard that other people had sold to him, and perhaps thought I would some time sell.

Q. Was anything else said to you, or was anything said to you about selling this timber or turning it over to anyone, between the time you filed and when you made your final proof?

A. No, there was nothing said at that time.

Q. Do you remember the occasion of your making your final proof? A. Yes.

Q. Who went to the land office with you when you made that? A. Mr. Downs.

Q. And who else?

A. I think it was perhaps Blivens; I think it was one of these gentlemen that was with me out there in the timber.

Q. Do you remember whether you paid any money in there at that time?

A. I think I paid all the money in there then.

(Testimony of Andrew Hanson.)

Q. How much money did you pay?

A. \$400, I think it was.

Q. Did you pay in check or cash?

A. I think I paid half in check and half in cash.

Q. Whose check was it you paid in there?

A. My own check.

Q. On what bank?

A. I think the First National Bank; I am not sure.

Q. Did you have a bank account?

A. It was a deposit check.

Q. Do you mean a certificate of deposit?

A. Yes, certificate of deposit.

Q. Who did you get that from?

A. I deposited the money there myself.

Q. When did you deposit the money?

A. Just a few days before, \$200, I think.

Q. Who did you get it from?

A. I borrowed it.

Q. Who did you borrow it from?

A. Mr. Caneg.

Q. What was that gentleman's Christian name?

A. I don't remember what his Christian name is now.

Q. What was his business?

A. At that time he was a barber by trade, but he was in real estate for a little while at that time.

Q. Does he live here now? A. Yes, sir.

Q. Whereabouts now?

A. Down on Eighth street, in Phelps' barber-shop.

(Testimony of Andrew Hanson.)

Q. Did you give him a note? A. Yes, sir.

Q. How long was it to run?

A. Six months, I think.

Q. Did you pay him any interest?

A. Yes, sir.

Q. How much?

A. I don't know; he let me off easy.

Q. What was your purpose in getting a certificate of deposit?

A. I had that money several days before, and I didn't want to carry the money; and I had some money in the safe there in the hotel, and so I took that.

Q. Where did you get the money you had in the safe in the hotel?

A. I made it out of my business; I always had money.

Q. Do you know where you got it?

A. I don't know. I always had some. I might need \$1,000, and sometimes I might not need any, and sometimes I left it in there.

Q. Then you didn't have a bank account, did you?

A. No, I didn't have a bank account at that time. If I had any money to put in the bank I used just a certificate, didn't run a regular account.

Q. Do you remember whether you were asked this question at the land office on final proof? "Where did you get the money with which to pay for this land, and how long have you had same in your actual possession?" Do you remember that

(Testimony of Andrew Hanson.)

question being asked you?

A. No, I don't remember. I think there was something similar asked me—if it was my own money.

Q. And I will ask you if you made this answer: "I earned it in my business. Have had it two or three months."

A. I don't think so.

Q. I think I asked you if you signed that paper?

A. Yes, sir.

Q. Read question and answer No. 17, and tell me whether or not you made that statement.

A. Well, that is true, all right.

Q. Did you make that answer?

A. Yes, I kind of think I did, but I forget. Of course it is true; that is true.

Q. On one of the occasions that you saw Mr. Wells did he tell you or intimate to you that you could get the money from him with which to make final proof?

A. No.

Q. How long after you made your proof did you negotiate for the sale of this property?

A. I don't recollect exactly. It was a couple of months perhaps, or three; I couldn't say—some time later.

Q. Who spoke to you about selling it?

A. I don't remember whether—I don't recollect who spoke first about it, whether I did or he did.

Q. Who was he? A. Mr. Wells.

Q. John I. Wells? A. Yes.

Q. You did talk to him about it?

A. Oh, yes.

(Testimony of Andrew Hanson.)

Q. What did he say about it?

A. He said I could sell it now.

Q. And how long after that did you sell it?

A. I don't remember.

Q. The same day, or the next day?

A. No, I don't suppose it was that quick.

Q. Did he buy it, or did he take you to somebody else?
A. No, he didn't buy it.

Q. Who did buy it?

A. I think it was a man by the name of Rand.

Q. Did you ever meet a man by the name of Rand?
A. No, sir.

Q. Did you ever know a man by the name of Rand?
A. No, sir.

Q. Did you ever see a man by the name of Rand?

A. No, sir.

Q. Did Mr. Wells tell you about a man named Rand?
A. I don't think so.

Q. You were paid something for this property, weren't you?
A. Yes, sir.

Q. Who paid you the money for it?

A. I think Kinkaid wrote out the check for me.

Q. And what was the occasion of Mr. Kinkaid writing a check for you?

A. We went up to Mr. Kinkaid and had the business done, up there.

Q. Who are "we"?

A. Myself, and I suppose Mr. Wells took me up there.

Q. You didn't know Mr. Kinkaid before that, did you?
A. I had seen him once.

(Testimony of Andrew Hanson.)

Q. That was the time he prepared your papers?

A. Yes, that was the only time I saw Mr. Kinkaid.

Q. Did you have any talk with Mr. Kinkaid about the price to be paid for this property?

A. Yes, sir.

Q. How much did he offer you for it?

A. I don't remember now. I wanted \$800, I guess it was, but I got less than that.

Q. How much less than that did you get?

A. I don't remember exactly; it was \$750, or something like that.

Q. Did you get \$750, or did you get \$250?

A. No, I got three, or seven hundred, in there somewhere; I couldn't exactly remember now; I got a check for it on the First National Bank for seven hundred and some odd dollars.

Q. Then the statement you started to make, that you got three, was merely a slip of the tongue?

A. No, sir, it wasn't.

Q. Did you make a deed at that time?

A. Why, yes, I signed some papers there; I suppose it would be the deeds.

Q. Did you read it over?

A. Yes, I think I did.

Q. You took what he gave you for it, did you?

A. I took what he gave me, yes.

Q. And that was between \$700 or \$800?

A. Yes.

Q. Did you notice that the consideration in the deed was \$800?

A. I don't remember.

(Testimony of Andrew Hanson.)

Q. Did you meet Mr. L. M. Pritchard at Mr. Kinkaid's office the day you sold?

A. Not in his office, I don't think.

Q. Did you meet him anywhere that day?

A. Yes, I think we went over to Mr. Pritchard's office.

Q. You went over there to acknowledge the deed?

A. I think so.

Q. Who took you over to his office—Mr. Wells?

A. Perhaps Mr. Wells.

Q. Did you pay Mr. Wells anything for taking you to Mr. Kinkaid's office and to Mr. Pritchard's office?

A. No, I never paid Mr. Wells a dollar.

Q. Just went with you out of the goodness of his heart?

A. I don't know. He was supposed to make the deal and tell me how to do it, as agent for the timber

Q. Did you understand that he was going to do that for you from the first time you saw him?

A. I don't know. I knowed he had sold timber claims, I knowed that, and mining claims; I knowed that long before I ever thought of taking a timber claim.

Q. Have you talked with Mr. Wells about this case since the suit was brought?

A. Not pertaining to this case, I haven't. I just spoke a few words to-day, when I met him out here.

Q. Is that the first time you have talked with him since you sold this land?

(Testimony of Andrew Hanson.)

A. No, I guess I have spoke to him a couple of times since meeting him.

Q. Has he ever been to see you since then?

A. No, sir.

Q. Has he ever asked you to make a statement?

A. No, sir.

Q. Has anybody ever asked you to make a statement? A. No, sir.

Q. Hasn't one of the agents of the Government asked you to make a statement as to what you would testify to here?

A. Not more than to-day; this gentleman took me up here to-day, and I made a statement up here.

Q. Did you ever make any other deed but the one that you have identified?

A. I don't think so; I don't recollect that I ever signed more than one paper.

Q. What is your best recollection about that?

A. My recollection is that I didn't sign more than once.

Q. Do you remember the day you made your final proof and paid the \$400 into the land office, they gave you a receipt for that? A. Yes, sir.

Q. That was the 15th of January? A. Yes.

Q. Didn't you take that receipt to Mr. Wells that day?

A. I don't recollect whether I did or not.

Q. Would you say that you didn't?

A. To the best of my knowledge I could, but I don't recollect.

Q. Do you remember when you turned this re-

(Testimony of Andrew Hanson.)

ceipt over to either Wells or Kinkaid?

A. I think I turned it over when I sold the claim, to Mr. Wells.

Q. You mean the date you made the deed?

A. Yes, I think so.

Q. You say you were given a check. Do you remember how much that check was for?

A. That I got from Mr. Kinkaid?

Q. Yes.

A. I don't recollect exactly how much that was—perhaps three hundred and thirty-five, or seven hundred and thirty-five, or seven hundred and fifty; it wasn't \$800, I know it wasn't.

Q. That is twice you said three hundred and something. A. Yes, I get that mixed up.

Q. What is the cause of your getting it mixed up?

A. I don't know; I tell the truth, that is all.

Q. What did you do with the check?

A. I put it in the bank; I put the money in the bank.

Q. Did you put the check in the bank?

A. Yes, sir.

Q. In which bank did you deposit the check?

A. First National Bank, I think.

Q. To your own credit?

A. Yes, sir, and I drew out some; I took some money out of that check, and deposited the balance of it.

Q. Do you remember on which bank that check was drawn?

(Testimony of Andrew Hanson.)

A. Yes, I think it was the First National Bank.

Q. And it was Mr. Kinkaid's personal check?

A. I couldn't tell you.

Q. And you took that check to the bank, and did I understand you to say that you deposited it to your credit?

A. Yes, sir, I cashed some of it and put the rest on deposit.

Q. Now, did you cash the check and place some of it to your credit and keep the rest?

A. I don't remember in what way I did it; I know I left some money in there at that time. I needed some in my other business. I was going away at that time.

Mr. GORDON.—We offer in evidence the timber and stone land sworn statement identified by Andrew Hanson, dated September 16, 1902; also the non-mineral affidavit of the same date; also the notice of publication of the same date, both identified by Mr. Hanson; the testimony given by Mr. Hanson on final proof, and identified as having been signed by him, dated January 15, 1903; the cross-examination attached, also identified by Mr. Hanson; the register's and receiver's certificates, dated January 15, 1903; the deed, dated February 12, 1903, made by Andrew Hanson, running to Horace S. Rand, consideration \$800, identified by the witness; certified copy of the patent, dated May 24, 1904; the testimony of the other witnesses given on final proof; all to the north half of the northeast quarter of section 22, and the south half of the

(Testimony of Andrew Hanson.)

southeast quarter of section 15, township 7 north of range 8 east, Boise Meridian.

(Marked Plaintiff's Exhibit No. 90A to 90P inclusive.)

Cross-examination.

(By Mr. BUNDY.)

Q. You understood, about the time you made this timber entry, did you not, Mr. Hanson, that Mr. Wells was engaged in the business of locating timber, and in the timber business generally?

A. Why, yes. I thought he was an agent; that is the way I understood it.

Q. He didn't tell you that?

A. No, but I heard that.

Q. Mr. Downs, you understood, was a locator?

A. Yes, sir.

Q. So you went yourself to Mr. Downs first, and asked him if he could locate you?

A. Yes, sir.

Q. So when you went up there and Pat Downs located you on a claim, you didn't understand that you had to take any claim he told you to, did you?

A. No, I didn't take it that way.

Q. He pointed you out one that you could have if you liked it? A. I liked the claim.

Q. If you hadn't liked it you wouldn't have taken it; you would have insisted on his getting you another?

A. No sir, if there hadn't been any timber on it I wouldn't have had it.

Q. What you was after was a timber claim?

(Testimony of Andrew Hanson.)

A. Yes, sir.

Q. You were asked a question as to whether or not you had any arrangement or talk with Mr. Wells at this time about selling this claim, and you said you know you could sell it, that you heard he had been buying claims. At the time you filed on your claim had you had any talk with Mr. Wells?

A. No, I didn't have any arrangement with him, whatever.

Q. At the time you made final proof, did you have any arrangement with him?

A. No, sir.

Q. Had he ever asked you about selling it, at that time? A. No, sir.

Q. Up to the time you made final proof, had Mr. Wells ever made any proposition to you to buy it, or had you ever made any proposition to sell?

A. No, sir.

Q. Or before the filing? A. No, sir.

Q. You say—when you say you thought you could sell it to Mr. Wells, you were basing that on the general reputation he had here, as a man who was buying timber claims?

A. He, or somebody else.

Q. As a matter of fact, you don't know whether he ever bought any timber claims?

A. No, sir.

Q. You said something about keeping money in the hotel safe. A. Yes, sir.

Q. You were a painter, and you had to have money to pay your men. A. Yes, sir.

(Testimony of Andrew Hanson.)

Q. It was customary, as I understand, to pay men in cash, among the trade unions.

A. I always paid cash.

Q. The land office you paid partly in cash and partly with a certificate of deposit? A. Yes.

Q. They wouldn't take checks at the land office.

A. I don't know; I know that is what I paid him.

Q. At the time you filed your first papers in the land office, Mr. Hanson, did you say who made out that first paper for you? Did you say Kinkaid?

A. I think so, yes sir.

Q. In that sworn statement you said—I am referring now to your original paper, filed September 16, 1902,—you said: “I have not, directly or indirectly, made any agreement or contract, or in any way or manner, with any person or persons whomsoever, by which the title I may acquire from the Government of the United States may inure in whole or in part to the benefit of any person except myself.” That statement was true when you made it?

A. That was true, yes sir.

Q. And that statement was absolutely true at the time you made your final proof?

A. Yes, sir.

Q. It is charged, Mr. Hanson, by the United States, through its attorneys in this case of the United States against the Barber Lumber Company and others, that you didn't enter this land for yourself, but for the benefit of the Barber Lumber Company and the other defendants. Is that true or false? A. No, it is not so.

(Testimony of Andrew Hanson.)

Q. It is further alleged in this complaint that, for the purpose of defrauding the United States and helping the Barber Lumber Company and the other defendants, you went to the land office and deliberately testified falsely.

A. I didn't know anything about such a company.

Q. And you didn't know anything about doing it for anybody else? A. No, sir.

Q. It that allegation true or false?

A. That is not true.

Q. So that nobody, at any time, had any interest in this claim except yourself? A. No, sir.

Q. Until you came to sell it, and then you got your pay for it. A. That's right.

Q. And that pay was \$700 or \$800, or something like that.

A. Yes; I don't remember exactly what I got for it.

(Witness excused.)

[Testimony of Thomas S. Thompson, on Behalf of the Complainant.]

THOMAS S. THOMPSON, produced as a witness on behalf of the complainant, being first duly sworn, testified as follows:

Direct Examination.

(By Mr. GORDON.)

Q. Your name is Thomas S. Thompson, is it?

A. Yes, sir.

Q. Where do you reside, Mr. Thompson?

A. 620 South 14th, Boise.

(Testimony of Thomas S. Thompson.)

Q. You are the husband of Mrs. Mary Thompson, who testified here this afternoon?

A. Yes, sir.

Q. What is your occupation at the present time, Mr. Thompson?

A. I have been working for the city for about four years.

Q. In what capacity?

A. Common labor work.

Q. Street sweeper? A. Yes.

Q. What was your occupation in September, 1902?

A. Well, sir, I wasn't able to do anything at that time. I used to team and ranch, mostly, till then. I wasn't able to do anything at that time.

Q. How long before that time had it been that you were working?

A. About two years, I guess.

Q. And how long after that was it that you started working again?

A. I didn't work any until the next spring, I believe, after that.

Q. Then you hadn't done any work for about three years?

A. Yes, sir, it was about three years that I wasn't able to work.

Q. Have you any children?

A. Yes, sir, I have nine.

Q. How old was the oldest one in 1902?

A. She is twenty-four now; you can figure it up.

Q. And the youngest one was how old?

(Testimony of Thomas S. Thompson.)

A. The youngest one, at that time, was about three years old, I believe.

Q. And is now about nine? A. Yes.

Q. You and your wife took up a claim under the Timber and Stone Act in September, 1902, did you?

A. Yes, I believe that is the date.

Q. Did you know Mr. John I. Wells at that time?

A. I just met him a few days before we went up, to look at the timber.

Q. Is that the gentleman, John I. Wells, now present? A. I believe so, yes, sir.

Q. Did you know Mr. Dean West at that time?

A. Yes, I knew him.

Q. Had you talked to him about taking up a timber claim?

A. No, Mr. West never said anything to me about taking up timber.

Q. Did you go to see Mr. Wells, or did he come to see you?

A. No, he didn't come to see me. There was a man by the name of Mr. Louen that asked me if I wanted to take some timber, and I said I wouldn't mind if I could get a good piece of timber land.

Q. And did he direct you to see Mr. Wells?

A. He said he would take me up there, send me up to a man that would locate me.

Mr. BUNDY.—Who told you this?

A. Mr. Louen.

Mr. GORDON.—Q. And you went to see Mr. Wells? A. Yes, sir.

Q. Did he tell you how much it would cost to

(Testimony of Thomas S. Thompson.)

locate? A. \$25, I believe.

Q. Did he send you to see somebody else to locate you?

A. Yes, he sent me to the hills.

Q. Who to see? A. Mr. Downs.

Q. Did he give you a letter to Mr. Downs?

A. I believe he did.

Q. Did you see the letter?

A. No, I didn't see the letter.

Q. Was it in an envelope? A. Yes.

Q. Did you pay Mr. Wells or Mr. Downs for this location? A. I paid Mr. Wells.

Q. Did you pay him before you started?

A. No, I paid him after I filed, when I come back.

Q. Did you give Mr. Wells \$25 for your wife also? A. Yes.

Q. Where did that \$50 come from, Mr. Thompson?

A. Well, my woman had \$90, and I had a little money. I had some stock before that time; I used to have stock and teams that I ranched with; I sold them.

Q. How long before that had you sold them?

A. I sold one team that summer before.

Q. Did you spend any of your wife's \$90 in this \$50?

A. No, sir, I spent my own money, that is, for my team that I sold.

Q. The reason I asked you, you said your wife had \$90. A. Yes, she did have it.

Q. And you went up and located on this land and

(Testimony of Thomas S. Thompson.)

came back? A. Yes, sir.

Q. And then you went to Mr. Wells' office on your return? A. Yes, sir.

Q. Did he prepare your filing papers for you?

A. Yes, sir.

Q. And your wife's filing papers?

A. Yes, sir.

Q. Did you pay him any thing for that?

A. I paid him the \$25 for locating, was all.

Q. Did Mr. Wells prepare these papers, or did he have them there, or did he send you somewhere else to get them prepared?

A. No, he made them out himself.

Q. Did you see Mr. Pritchard there?

A. No, I didn't see Mr. Pritchard.

Q. And then it came time to make your final proof, did it? A. Yes, sir.

Q. And did you have the money for yourself and your wife to make final proof?

A. I didn't have it for myself.

Q. Did you have the money for your wife?

A. No, I couldn't raise it at the time.

Q. Did you try to raise it? A. Yes, sir.

Q. Did you finally raise it? A. Yes, sir.

Q. Who from?

A. I went and seen Mr. Wells, and asked him if he couldn't help me out some way; that I would have to lose the claim if he couldn't, and he said he would try and see what he could do for me.

Q. What did he do?

A. He got \$400 for my woman; that was all he

(Testimony of Thomas S. Thompson.)

could do, he said.

Q. Did he give that to you to give to her?

A. No, he sent it down by another gentleman.

Q. Did you know the other gentleman?

A. Mr. West. He said he would have it ready for me, and sent it down.

Q. And you couldn't get enough for yourself, to prove up with, from Mr. Wells, and so you dropped the claim?

A. Yes, sir.

Q. Did Mr. Wells give any reason for not letting you have the money?

A. He said he couldn't raise it, couldn't borrow it any place; he couldn't raise the money to let me have it.

Q. That was the day your wife proved up?

A. Yes, sir. It was the day before.

Q. I meant about that time.

A. Yes, sir.

Q. Did you negotiate the sale of your wife's property?

A. Afterwards I sold it. A party come to me and wanted to buy it of the woman, and I told him I would see her and see what she would take.

Q. Who was the party that came to you?

A. Mr. Kinkaid.

Q. You had never met Mr. Kinkaid before?

A. No.

Q. Did Mr. Downs go to Mr. Kinkaid's office with you?

A. No.

Q. Mr. Wells?

A. No.

Q. Did Mr. Wells tell you to go to Mr. Kinkaid's

(Testimony of Thomas S. Thompson.)

office? A. No.

Q. Was Mr. Wells in Mr. Kinkaid's office when your wife sold her property?

A. No, sir, we was there alone.

Q. The two of you were alone?

A. Yes, sir.

Q. How much did you sell that property to Mr. Kinkaid for? A. \$800.

Q. Was it given to you in cash or in check?

A. He give us a check on the First National Bank.

Q. Was is cashed or deposited?

A. No, sir, we cashed it and drewed it all out.

Q. How much was that check for?

A. \$800.

Q. Who signed the check?

A. Mr. Kinkaid.

Q. And his name was signed to it?

A. I suppose so. I forget now, it has been so long.

Q. Did you pay Mr. Wells the same day?

A. Yes, sir.

Q. The two of you went together?

A. Yes, we went up there and paid him, and drewed the note.

Q. I show you the deed—

A. I didn't read the deed. I didn't pay any attention to it. I couldn't read it now, because I haven't my glasses.

Q. I want to ask you if you can read your signature to that.

(Testimony of Thomas S. Thompson.)

A. Yes, that is my signature.

Q. That is to the deed, February 11, 1903, that was put in evidence with your wife's testimony.

A. Yes, sir.

Cross-examination.

(By Mr. BUNDY.)

Q. Mr. Thompson, what was your illness in 1902? What was the trouble with your health?

A. Well, sir, I was down sick with fever at first, and the doctors told me I had Bright's disease at that time.

Q. And you were practically unable to work, I think you said, for several years.

A. Three years, yes, sir.

Q. And during that three years was the time you conceived the idea of taking advantage of the beneficent laws of the United States and exercising your rights by taking a timber and stone claim?

A. I thought I had a right to.

Q. And at that time you were sick and had a wife and nine children to take care of?

A. No, I had seven at that time.

Q. And at the time you went up and filed, you had to pay your share of the rig?

A. Yes, sir, I paid my share.

Q. And you went to the land office and paid a filing fee for both yourself and your wife.

A. Yes, sir.

Q. And paid the cruiser \$25 for yourself and wife to be located?

A. Yes, sir.

Q. And all of those sums were paid out of your

(Testimony of Thomas S. Thompson.)

savings as a working man.

A. Yes, sir, mine and my wife's together.

Q. And up to the time you filed this first paper, you didn't have any idea where you would get the money.

A. I had an idea where I could get it. I expected some money from my folks at home. They had money and have it yet.

Q. You hoped at that time that you would have that money? A. Yes, sir.

Q. So that at the time you filed your first papers, you had no arrangement with anybody, and had made none for your wife, by which either of you had agreed to turn over your claims to anybody?

A. No, sir; I never had no contract with anybody.

Q. When it came time to make final proof you were unable to get the money from your father's estate? A. Yes, sir.

Q. How long before you made final proof was it that you learned that you were to be disappointed?

A. It was just a short time.

Q. After you found that you were going to be disappointed, you began looking around?

A. Yes, sir.

Q. Up to that time had Mr. Wells suggested lending the money to you? A. No, sir.

Q. Had anybody suggested buying your property? A. No.

Q. And when everything else failed you, you went to Mr. John I. Wells?

A. Yes; I went to Mr. Olden. I was well acquainted with him, and he said he wasn't letting out

(Testimony of Thomas S. Thompson.)

any money then.

Q. He is the president of the Idaho Trust & Savings Bank? A. Yes, sir.

Q. And the Idaho Trust & Savings Bank wouldn't advance you and your wife enough to avail yourselves—

A. No, sir; and at that time I didn't ask any more questions.

Q. Then you went to John I. Wells?

A. Yes, sir.

Q. And you asked him if he would try and find you enough to save what you had already invested?

A. Yes, sir.

Q. And after a while he was unable to help you, but did raise enough to pay for your wife's?

A. Yes, sir.

Q. But he would go the limit and help your wife as far as he could? A. Yes, sir.

Q. And promised to send the money to her?

A. Yes, sir.

Q. And your wife gave a note?

A. Yes, we give a note together, both signed it.

Q. And in due course of time you sold this property? A. Yes, sir.

Q. Up to that time, had you ever made a single word with John I. Wells about buying this property?

A. No, sir; I never did.

Q. The United States of America has charged you and your wife, and a good many other people, in this action we are trying here, with having entered into a wicked and unlawful conspiracy to defraud the United States out of certain lands. Is that true or

(Testimony of Thomas S. Thompson.)

false, as far as you are concerned? You never entered into any conspiracy, did you?

A. No, sir.

Q. And it is charged in this bill of complaint that you and your wife, for the purpose of helping out the Barber Lumber Company, and to get land for them, deliberately went to the land office and swore to what you knew to be false. Is that true or false?

A. It is false.

Q. The only possible way that saved your right as a citizen to get some timber and stone land and sell it at a profit, the only thing that made it possible for you to do it, was John I. Wells loaning you the necessary money.

A. Yes, sir.

(Witness excused.)

[Testimony of Sedgwick Hoover, on Behalf of the Complainant.]

SEDGWICK HOOVER, produced as a witness on behalf of the complainant, being first duly sworn, testified as follows:

Direct Examination.

(By Mr. GORDON.)

Q. Your name is Sedgwick Hoover?

A. Yes, sir.

Q. Where do you reside, Mr. Hoover?

A. Boise City.

Q. How long have you resided at Boise?

A. I have been here about fourteen years, I think.

Q. What is your occupation?

A. Plastering.

Q. Were you engaged in the same business in 1902?

A. Yes, sir.

(Testimony of Sedgwick Hoover.)

Q. You entered a claim under the Timber and Stone Act in 1902, did you? A. I think so, yes.

Q. I show you timber and stone land sworn statement, dated March 25, 1902, and ask you if you signed that paper? A. Yes, sir.

Q. I show you a non-mineral affidavit of same date, and ask you if you signed that?

A. Yes, sir.

Q. I show you testimony of Sedgwick Hoover, given on final proof, dated June 18, 1902, and ask you if that is your signature to that paper?

A. Yes, sir.

Q. I show you deed, dated July 14, 1902, by Sedgwick Hoover and wife, Lena, to A. E. Palmer. Is that your signature? A. Yes, sir.

Q. Is that the signature of your wife to that deed? A. Yes, sir.

Q. Mr. Hoover, who first spoke with you about taking up a timber claim?

A. Dean West, I believe.

Q. What did Mr. West say to you?

A. He asked me if I had taken up a stone and timber claim, and I told him no.

Q. What else did he say?

A. He wanted to know if I wanted to take up one, and I told him I didn't know whether I did or not, that I would think it over. He was a neighbor of mine; he lived in the same block where I lived, and he used to work at carpenter work, and him and I was together a good deal, and he asked me a time or two about it, and finally I made up my mind that I would take up a piece.

(Testimony of Sedgwick Hoover.)

Q. Did you have the money with which to pay for a claim at that time?

A. Yes, sir; I had money at that time.

Q. Did he tell you how much you could make out of it?

Mr. BUNDY.—I object to that.

Mr. GORDON.—Q. Did he tell you about how much you could make out of it?

A. Yes, he told me something about it. I don't remember about how much it was.

Q. How much did he tell you?

Mr. BUNDY.—I object to that as incompetent, irrelevant and immaterial, and asking for hearsay evidence, not calling for the conversation.

A. Why, I think I understood him to say I would make about \$300.

Q. Did he tell you anything at that time about money being furnished you with which to make your final proof or to prove up?

Mr. BUNDY.—I object to that as incompetent, irrelevant and immaterial, and as leading and suggestive.

A. No, sir.

Mr. GORDON.—Q. Did he at any time tell you that? A. No.

Q. Did you know Mr. John I. Wells at that time?

A. No, sir.

Q. Did you know Mr. Patrick Downs at that time? A. No, sir.

Q. Did you go to view this land?

A. Yes, sir.

(Testimony of Sedgwick Hoover.)

Q. Did you go alone, or did someone go with you?

A. A party of four went up.

Q. Who were of the party?

A. Will Lane, and a man named Gibson, a hack driver here in town now, and another man—I was introduced to him, but I don't remember his name. I never seen him after that only a time or two, and I have never seen him since, so I don't remember his name.

Q. Who arranged for that party?

A. I think Willard Lane got the wagon and horses, to go up.

Q. Who told you when the party was going to start?

A. Why, I think I met some of them on the street the day before; we was going to start in the morning, and they told me to come over to the Pacific Hotel in the morning, and I went over there and met the balance of them.

Q. Who was it that met you on the street and told you that?

A. I don't know for sure, but I think it was Lane or Gibson—one of the two, I don't remember which.

Q. Had you ever talked to him about going up before?

A. No, sir, not before the time I was telling you about, when we was getting ready to go. I think Dean West told me that they was going, in the first place, and then Gibson—I was kind of acquainted with him.

Q. Did he tell them you were going?

(Testimony of Sedgwick Hoover.)

A. Yes, sir.

Q. And then you met them on the street and asked them when they were going?

A. Yes, sir, I think I did.

Q. And they told you they were going next day?

A. Yes, sir.

Q. And for you to meet them at the Pacific Hotel?

A. Yes, sir; they said the wagon would be there.

Q. What time did they tell you the wagon would be there? A. I think it was seven o'clock.

Q. Did you meet Mr. Wells at the Pacific Hotel that morning? A. No, sir.

Q. Did you know what it was going to cost you for the location fee? A. Yes, sir.

Q. Who told you that?

A. Mr. West, I think.

Q. How much did he tell you it would be?

A. \$25.

Q. Did he tell you who would locate you?

A. No, sir.

Q. Did he give you a note to anyone?

A. No, sir.

Q. And did he tell you that somebody would meet you there on that day?

A. I don't think he told me that, no, sir.

Q. And you didn't know whether anyone was going to meet you to locate you or not?

A. Yes, it was generally understood that there would be somebody there to meet us, where we was going to.

(Testimony of Sedgwick Hoover.)

Q. Where did you go?

A. Went to Idaho City.

Q. And were you located from there, or where else did you go?

A. We went from there out—

Q. Did you go to Kempner's ranch?

A. No, sir; I don't think so.

Q. Did you stop at Idaho City?

A. Yes, sir.

Q. How far was the land from Idaho City?

A. Well, sir; I couldn't tell you exactly how far it is.

Q. Was it a mile, or thirty miles?

A. It was more than a mile, and it wasn't thirty miles.

Q. Give us your best recollection as to how far it was.

A. I should judge it must be about four or five or seven miles, something like that.

Q. Did you walk from Idaho City?

A. Yes, sir.

Q. How long were you walking out there?

A. We started out in the morning, and got back about one o'clock, I think, or somewhere along in the middle of the day.

Q. What time of the morning did you start?

A. We started pretty early after breakfast, in the morning.

Q. Did you meet Mr. Patrick Downs at Idaho City?

A. Yes, sir.

Q. Did you tell him you wanted to be located?

(Testimony of Sedgwick Hoover.)

A. Yes, sir.

Q. Did any of your party have any letter of introduction to him?

A. Yes, I think one of them did, but I don't remember which one.

Q. Do you know where that one got that letter?

A. No, sir; I do not.

Q. Do you remember which of the party was the first one to be located?

A. Well, sir, I don't believe I could tell you which one was located first.

Q. Were you shown a claim, and did he say, "This is the claim you are to locate on"?

A. Yes, sir.

Q. Did Mr. Downs give you a description of the property?

A. No, sir; he didn't give me a description.

Q. Did he write out the description of the property?

A. No, he didn't give me a description of the property, but he give it to one of the men that was with me.

Q. Who did he give it to?

A. I don't know for sure, but I think this man that I tell you I don't know his name. He seemed to be a kind of a foreman of the bunch in a way, and I think he done most of the business.

Q. Did he tell you where to go to have your papers made out?

A. No, I don't think he did.

Q. Did you come back that next day?

(Testimony of Sedgwick Hoover.)

A. Yes, we came back the next day.

Q. And the next day after you got back, or the same day, did you have your papers made out?

A. We didn't get back until along in the evening.

Q. The next day did you meet the same gentleman again that went up in your party? A. Yes, sir.

Q. Where did you meet them?

A. I think I met this man up in the Brewery saloon.

Q. Did you have an appointment to meet him there?

A. No, I just went in there in the morning, and he was in there.

Q. That was the man that had the descriptions?

A. Yes, sir.

Q. Did you meet anybody else there?

A. I met several men in there.

Q. Did you meet anybody there with reference to this property? A. No, sir.

Q. Did you and that gentleman go out from there and go somewhere and have your papers made out?

A. I went out of there and went up to John I. Wells' office.

Q. Was that the first time you had met Mr. Wells? A. Yes, sir.

Q. And was that the first time you know you were to go to Mr. Wells' office? A. Yes, sir.

Q. And this gentleman had the description, as I understand? A. Yes, sir.

Q. And he introduced you to Mr. Wells?

A. Yes.

(Testimony of Sedgwick Hoover.)

Q. And Mr. Wells made out your papers for you?

A. Yes, sir.

Q. Did Mr. Wells make out this sworn statement for you, that is, the first paper you filed in the land office?

A. Yes, I think that is the paper.

Q. And this non-mineral affidavit?

A. I don't remember whether there was two of them or one. I guess they was both together.

Q. And this notice of publication?

A. Yes, sir.

Q. Did Mr. Wells charge you anything for making out these papers?

A. I don't remember whether he did or not.

Q. Did you pay him the locating fee at that time, or did you pay him later?

A. I think I paid him after that; I don't think I paid him that time.

Q. Did you have any understanding with Mr. Downs as to when and to whom you were to pay the locating fee?

A. No, sir.

Q. Was the locating fee taken out after you sold this property?

A. I think it was, yes.

Q. Now, did Mr. Wells go to the land office with you?

A. No, I don't think he did.

Q. Did you know Mr. King, the register of the land office?

A. Yes, sir.

Q. I notice in this first paper that I showed you, the sworn statement, the certificate of the register to the effect that you had been satisfactorily identified before him by John I. Wells. Does that refresh your recollection or not? Do you remember whether

(Testimony of Sedgwick Hoover.)

Mr. Wells went to the land office and introduced you to those people? A. No, I do not.

Q. Are you sure he didn't go?

A. No, I am not sure he didn't go, but I don't remember of seeing him there.

Q. How many of the party went to the land office with you?

A. I went to the land office alone; I think I went up alone to the land office.

Q. Did you meet any of the other persons who located with you there at the land office?

A. Yes, sir.

Q. Did you meet all of them there?

A. I don't remember if they was all there or not.

Q. Which of the party do you remember that were there? A. I think Mr. Lane was there.

Q. Was the gentleman that went to Mr. Wells' office with you there?

A. Yes, I believe he was.

Q. Have you thought of his name yet?

A. No, sir; I was only introduced to him once, and I don't remember his name.

Q. Was his name Judge?

A. It seems to me like that was what we called him.

Q. Was his name W. F. Noble?

A. I don't remember the name Noble; Judge sounds more like the name. I don't remember whether it was Judge or not.

Q. Did you know Mr. Charles Nelson?

A. Yes, sir.

(Testimony of Sedgwick Hoover.)

Q. Did you have any talk with him before you filed on this land, with reference to filing?

A. Yes.

Q. Did he urge you to file?

Mr. BUNDY.—I object to that as incompetent, irrelevant and immaterial, calling for hearsay evidence, a conversation with a person not a party to the record.

A. Yes, he talked to me about going up and taking up a piece of land.

Mr. GORDON.—Q. When you went to the land office, you filed this sworn statement, and this non-mineral affidavit, did you? A. Yes, sir.

Q. How long after that, if at all, was it that you saw Mr. Wells again?

A. I don't remember just how long it was, after that; I seen him after that, though.

Q. Did you know when the time would be that you should prove up?

A. I think we had to advertise a certain length of time, but I don't remember how long the time was now.

Q. Did anybody tell you when you should prove up?

Mr. BUNDY.—Hasn't he answered that? He said he advertised, but didn't know how long.

A. I don't remember just how it was. I know I was up there in time to prove up.

Mr. GORDON.—Q. Do you remember seeing Mr. Gibson and Mr. Lane, and they tell you that the time was near to prove up?

(Testimony of Sedgwick Hoover.)

A. Yes, I believe they did. I think they told me we would all have to be up there together, to be a witness for each other, or something of that kind.

Q. Where did you meet them when they told you that? A. I don't just remember where.

Q. Did they come to see you, or did you meet them on the street, or did you go to see them?

A. I think I seen them on the street, if I am not mistaken.

Q. Did they tell you about it? What did you ask them?

A. I don't know whether I asked them or not.

Q. The time came for you to make your final proof? A. Yes, sir.

Q. And you went to the land office and paid in a certain amount of money? A. Yes, sir.

Q. How much did you pay in the land office?

A. I paid in four hundred and some odd dollars; I don't know just how much.

Q. Where did you get that four hundred and some odd dollars? A. I got it from Wells.

Q. John I. Wells? A. Yes, sir.

Q. When did you get it from him?

A. I got it from him the forenoon that we proved up.

Q. Did you go to his office for it?

A. Yes, sir.

Q. When had you arranged to get that \$400 from Mr. Wells?

A. I hadn't arranged for it up to this time.

Q. You went to his office on that day—you proved

(Testimony of Sedgwick Hoover.)

up June 18, 1902—and you went to him that morning?

A. Yes, sir.

Q. What did you say to him?

A. I went up to his office and told him I didn't have the money to prove up with.

Q. What did he say?

A. He wanted to know if I couldn't get it some way, if I didn't have any property or anything I could get it with. I told him I could get it, but it would take some time to get it, and they were ready to prove up, and he told me he would let me have the money.

Q. Did you give him a note for it?

A. I don't remember whether I did or not.

Q. And you took that money to the land office then and paid up?

A. Yes, sir.

Q. You went right from Wells' office to the land office?

A. Yes, sir. I didn't go up there—the rest of the boys was up in the land office, and I went up to the office and got the money—they was not there when I went down.

Q. Did any of the rest of them go to Wells' office with you?

A. No, sir.

Q. Who told you to go to Wells' office?

A. Nobody.

Q. How did you know you could get it from Mr. Wells?

A. I didn't know I could get it from him when I went there.

Mr. BUNDY.—He went to find out.

(Testimony of Sedgwick Hoover.)

Mr. GORDON.—Q. Had you made any effort to get it anywhere else? A. No, sir.

Q. Then you waited till the forenoon of the day you were to make your final proof, and didn't know where you were to get the money, or whether you were going to lose the money you had already put up. Is that right?

A. Yes, sir, that is right.

Q. And then the happy idea struck you to go and see Mr. Wells? A. Yes, sir.

Q. You never had borrowed any money from Mr. Wells before that? A. No, sir.

Q. You had no agreement with Mr. Wells or anybody else by which you had agreed to convey this property to anyone?

A. No, sir; I don't think so.

Q. Don't you know whether you did or not?

A. I know I didn't.

Q. As a matter of fact, when Dean West first spoke to you about it, didn't you have an understanding that you would take this up, and all the money would be furnished you, and you were to convey it to somebody and get \$250 over and above what it cost?

A. No, sir.

Q. Then did Wells tell you to tell them at the land office where you received that money, or what you were to say about it?

A. No, sir, he did not.

Q. There was nothing said about that?

A. No, sir.

Q. Do you remember what you told them when

(Testimony of Sedgwick Hoover.)

you went to the land office, as to where you received that money?

A. I think they asked me if this money was mine, and I told them yes.

Q. Do you remember telling them how long you had had it?

A. No, sir, I don't remember.

Q. I will ask you if this question was asked you: "Did you pay, out of your own individual funds, all the expenses in connection with making this filing, and do you expect to pay for the land with your own money?" Do you remember that question being asked you? A. Yes, sir.

Q. And is this your answer: "Yes, sir, I do"? Did you have a bank account at that time?

A. Yes, sir.

Q. Whereabouts?

A. At the Bank of Commerce—I think it was the Bank of Commerce, or the Capital State Bank, I don't remember which.

Q. Do you know whether you had a balance at the bank at that time?

A. Yes, sir, I had money in the bank at that time.

Q. How much did you have in the bank at that time?

A. I don't remember just how much.

Q. Was it \$10, or was it \$100?

A. I have had money in the bank several times, and I don't just remember.

Q. You don't remember whether you had any in the bank at that time? A. Yes, sir.

(Testimony of Sedgwick Hoover.)

Q. Which bank?

A. I think it was the Bank of Commerce or the Capital State Bank.

Q. Did you have an account at both banks?

A. I have had, yes, sir.

Q. Do you remember this question being asked you, No. 17: "Where did you get the money with which to pay for this land, and how long have you had same in your actual possession?" Answer: "Worked for it. Have had some of it on hand 5 or 6 years."

Mr. BUNDY.—I object to it for the reason that the question was not a proper question for the land office to ask, illegal and improper, and entirely incompetent, irrelevant and immaterial.

A. Yes, sir.

Q. And still the money you paid in there was the money John I. Wells gave you, and you took it from his office to the land office. Is that correct?

Mr. BUNDY.—I object to that as incompetent, irrelevant and immaterial, and tending to impeach their own witness.

Mr. GORDON.—Q. Is that what I understood you to say?

A. I don't understand the question.

Mr. GORDON.—Please read the question. (Question read by stenographer, as follows:) "And still the money you paid in there was the money John I. Wells gave you, and you took it from his office to the land office. Is that correct?"

A. I think this meant all the money. It didn't

(Testimony of Sedgwick Hoover.)

just mean the money I paid out this certain time.

Q. I mean the money you paid in the land office that day was the money you got at John I. Wells' office.

A. Yes, sir.

Q. They gave you a receipt for that money?

A. Yes, sir.

Q. And did you take that receipt back to Mr. Wells that day?

A. No, I don't think I took it back to him then.

Q. Do you remember how long after that you went to Mr. Wells' office? Were you there that day, or the next day?

A. I don't just remember whether I went back that day, or whether it was the next day.

Q. What is your best recollection?

A. I can't remember, some way or other.

Q. How long after that was it that you sold this property?

A. Well, it was quite a little while after that; I don't remember just how long it was.

Q. Was it a month?

A. Yes, it was a month anyway; it was over a month.

Q. And to whom did you sell it?

A. I sold it to a man up in the Sonna Block—I don't remember his name now.

Q. Had you ever met him before?

A. No.

Q. Was his name Kinkaid, or was his name Pritchard?

A. I guess it must have been Pritchard; it sounds

(Testimony of Sedgwick Hoover.)

to me like it was Pritchard.

Q. How did you happen to go there?

A. I think somebody told me; I don't remember just who it was now.

Q. Do you remember who it was that told you?

A. I believe it was Pat Downs.

Q. Who was at the office of this gentleman when you sold it?

A. I don't just remember who was there.

Q. Was Mr. Downs there?

A. My wife was there with me. Mr. Downs wasn't there.

Q. Was Mr. Wells there?

A. I can't remember whether Wells was there or not.

Q. Was the deed prepared when you went there?

A. I don't know whether it was or not, whether it was made out; we was in there some little time.

Q. How long were you in there?

A. We was in there three quarters of an hour, I should judge.

Q. Were any of the parties that located with you there?

A. No, sir, not at that time.

Q. Did you say that this was in the Sonna Building?

A. Yes, sir.

Q. Did this gentleman know what you came for?

A. I suppose he did, yes.

Q. Did you take your wife with you?

A. Yes, sir.

Q. And this was the first time you had ever talked

(Testimony of Sedgwick Hoover.)

to this gentleman about this affair, was it?

A. I don't remember whether I was up there before or not.

Q. What is your best recollection?

A. It seems to me like I was up there before; yes, I was up there before that.

Q. How long before?

A. I don't remember whether it was the same day or the day before that.

Q. Then you went there with your wife, and you signed this deed which you have identified?

A. Yes, sir.

Q. Did your wife take up a timber claim?

A. No, sir, not at this time.

Q. Did she take one up subsequently to your taking one up? A. Yes, sir.

Q. Did she prove up on it?

A. Yes, sir.

Q. Did she sell it? A. Yes, sir.

Q. Did she sell it to the same man that you sold yours to? A. No, sir.

Q. To whom did she sell hers?

A. She sold it to a man by the name of Guy Matthews.

Q. Were you paid for this property in cash or by check?

A. Well, sir, I don't remember whether it was cash or not.

Q. How much money were you given that day?

A. \$260—something like that—I don't remember just how much.

(Testimony of Sedgwick Hoover.)

Q. Was anything said about the \$25 locating fee there at that time?

A. Yes, sir, I think there was.

Q. What did he say—that he would keep that out?

A. Yes, I believe that was taken out.

Mr. BUNDY.—The money that Wells had advanced to you was taken out of this?

Mr. GORDON.—One moment. I will ask you if the man said anything to you, or gave any reason why he didn't give you more than that.

A. I don't remember him saying anything about not giving me any more.

Q. Did he tell you he was keeping some money out for Wells?

A. Yes, sir.

Q. Did he tell you how much he was taking out for John Wells?

A. Why, I think he did; I think he had it figured up.

Q. Did you tell John Wells that you were going up there?

A. No, I don't think I did.

Q. Did John Wells tell you to go up there?

A. No, sir.

Q. Do you remember how you happened to go to Pritchard's office?

A. I think Pat Downs told me to go up there, if I am not mistaken.

Q. Did you ever make but the one deed to this piece of property?

A. No, I don't think I did.

Q. Didn't you make one deed, and then were

(Testimony of Sedgwick Hoover.)

asked to come back later and make another deed?

A. No, I don't think so.

Q. Are you sure of that?

A. No; I think I only made one deed.

Q. Didn't you make a deed to this property the day you paid the money in the land office, and were told to come back after you got your final receipt and make another one?

Mr. BUNDY.—I object to that for the reason that he got his final receipt on the day he paid his money in the land office.

A. I don't remember of making any deed up there.

Q. Did you make any deed anywhere else, other than the one I have shown you, to this property?

A. I don't think so.

Q. Don't you know whether you did or not?

A. No, I don't think I did.

Q. I will ask you if this didn't all turn out just exactly as you had expected it to from the first time Dean West had spoken to you, with the exception of the fact that you didn't get as much as they promised you.

Mr. BUNDY.—I object to that as incompetent, irrelevant, and immaterial, and as assuming that they had promised to give him anything. Dean West never told him that they would give him anything.

Q. (Last question read by stenographer.)

Mr. BUNDY.—I will ask the witness to notice the question closely, and you will notice that it assumes in there that somebody promised to give you something. If that assumption isn't correct, you, of

(Testimony of Sedgwick Hoover.)

course don't have to answer the question. Read the question again, Mr. Stenographer.

(Question re-read by stenographer.)

A. I don't hardly understand the question.

Q. (Question read again.)

A. No; I didn't know all about this at that time, you know.

Q. This John I. Wells that we are speaking about, I will ask you if he is the gentleman that just came into the room?

A. I don't know whether he just came in or not. He is sitting over there.

Q. I show you an affidavit here, dated October 1, 1907, and ask you if that is your signature to it, and whether or not you swore to that paper. Is that your signature to the paper?

A. That is my name, yes.

Q. Did you sign your name there?

A. Yes, sir.

Q. And swore to it?

A. I don't think I swore to it; I don't remember swearing to it.

Q. That is your signature to that paper?

A. Yes, that is my name, yes, sir.

Q. Did you write your name there?

A. Yes, sir.

Q. Did you read this paper over before you wrote your name there?

A. I think I did read it over.

Q. I will ask you whether the statements made in this paper are true.

(Testimony of Sedgwick Hoover.)

A. I don't know whether they are or not.

Q. I will ask you to read it (hands witness paper).

A. I don't read very good. If you will read it I can understand it better than I could if I read it myself.

Q. You have your glasses on, haven't you?

A. Yes, but I am not very well educated, and I don't read very good.

Mr. BUNDY.—Can you read, Mr. Hoover?

A. Yes, sir.

Mr. KEIGWIN.—You can write, can't you, Mr. Hoover? A. Yes, sir.

Q. You can read print?

A. Yes, sir. I don't read the papers very much.

Q. Don't you read the papers?

A. I can't see; it hurts my eyes to read the papers.

Mr. GORDON.—Q. Do you remember going before Mr. W. S. Wade, the special agent of the General Land Office, the gentleman sitting there, and making a statement?

A. No, I don't remember.

Q. Do you remember of ever being in this building, before Mr. Wade, going on two years ago, and making a statement?

A. In the land office?

Q. No, adjoining the land office.

A. I don't remember.

Q. Do you remember who presented this paper to you, and in whose presence you signed it?

A. You are talking about this affidavit?

(Testimony of Sedgwick Hoover.)

Q. Yes.

A. Yes, I remember meeting this man with this paper, yes. He took me up here in an office up here in the top of this building.

Q. I will ask you if you didn't make this statement: "When Dean West first spoke to me about taking up a timber claim, he said there would be about \$300 in it for me." Did you make that statement?

A. I think I did, yes.

Q. "On the day of final proof, Wells asked me if I had the money to prove up with. I told him that I did not. He then handed me \$412.50, and told me to swear at the Land Office that it was my own money." Did you make that statement?

A. I don't just remember. I wasn't paying much attention to the man. He done most of the talking, and I wasn't paying much attention to it.

Q. You signed that statement though, didn't you?

A. Yes, I signed that paper.

Q. I will ask you if you didn't make this statement: "When in truth and in fact no part of the money that I paid into the United States land office was my own."

Mr. BUNDY.—I object to that as incompetent, irrelevant and immaterial. The affidavit itself is the best evidence of what it states.

Mr. KEIGWIN.—He says he can't read the affidavit.

Mr. BUNDY.—I am making my objection that the affidavit is the best evidence.

A. No, I never made that statement.

(Testimony of Sedgwick Hoover.)

Q. Isn't it a fact that you testified here that no part of the money you paid into the land office was your own money, that you got it from John I. Wells that day?

A. I never had any money but what was my own money, that I know of.

Q. Then you considered this money that you got from Wells as your own money. Is that the way you explain it? A. Yes, sir.

Q. Did you make this statement to Mr. Wade, on October 1, 1907—I read from the affidavit which you say you signed: “When I got the final certificate from the land office I turned it over to John I. Wells and either Wells or Louis M. Pritchard gave me some money.” Is that right?

Mr. BUNDY.—That is all in conflict with his evidence to-day, and I object to it as incompetent, irrelevant and immaterial. A. Yes.

Mr. GORDON.—Q. I read from the affidavit, and ask you if you made this statement: “At the time I filed on the land I understood that I was taking it up for someone else, and that I was to get \$300 for taking up the land. My understanding was with John I. Wells.” Did you make that statement?

A. No, I don't think so.

Q. Will you say that you didn't make this statement?

Mr. BUNDY.—I object to that as incompetent, irrelevant, and immaterial.

A. I don't just understand it.

Mr. GORDON.—Q. I will read it again. I am reading from the paper which you said you signed,

(Testimony of Sedgwick Hoover.)

the affidavit before W. S. Wade, special agent of the General Land Office, subscribed and sworn to by S. Hoover, October 1, 1907. "At the time I filed on the land, I understood that I was taking it up for someone else, and that I was to get \$300 for taking up the land. My understanding was with John I. Wells."

Mr. BUNDY.—I object to that as incompetent, irrelevant, and immaterial, tending to impeach their own witness, showing him an affidavit which he didn't read.

A. I never had any understanding with John I. Wells that I was to get \$300.

Q. Was that statement made by you at that time true or false?

Mr. BUNDY.—I object to that for the reason that the witness says he don't remember making any such statement. Mr. Hoover I will state to you—

Mr. GORDON.—I object.

The EXAMINER.—The witness must have time to answer that question. Every time he hesitates the objection is put in again. The witness should have time to answer the question, and he should answer it, whether that statement is true or false.

Mr. BUNDY.—Defendant's counsel insists upon the right to make timely and proper objection, and insists that counsel for the plaintiff have no right to ask the witness if a statement he made was true or false, in the absence of any evidence to the effect that such statement was made. The Court hasn't grasped at all the purpose and point of the objection.

Mr. GORDON.—I will admit that counsel for the

(Testimony of Sedgwick Hoover.)

Government haven't grasped the point of the objection, either.

The EXAMINER.—The objection is recorded, of course. Now the witness may answer the question. (Question read by stenographer.)

Mr. BUNDY.—Same objection as before made.

Mr. GORDON.—Will you answer the question?

A. I don't understand the question exactly, some way or other.

The EXAMINER.—Read the question to him again. It seems to be a simple question.

Mr. BUNDY.—It is anything but a simple question.

The EXAMINER.—Witness, answer the question. Read it again. (Question read by stenographer.)

Mr. GORDON.—Q. I will ask you if you made this statement to Mr. Wade and I read from the paper that you have said that you signed. It is the last paragraph on the page, just above your name. "At the time I filed on the land I understood that I was taking it up for someone else, and that I was to get \$300 for taking up the land. My understanding was with John I. Wells." Did you make that statement? A. No, sir.

Q. Will you say positively that you didn't make that statement? A. Yes, sir.

Q. Then why did you sign it and swear to it? (Witness pauses.) Please answer the question.

A. I signed the paper all right.

Q. Why did you sign it then, if it contained statements that you didn't make?

(Testimony of Sedgwick Hoover.)

A. I guess I didn't understand that just the way it means.

Q. Isn't it plain enough?

A. At the time I signed it I guess I didn't understand it the way it means.

Mr. KEIGWIN.—Q. Do you understand it now?

A. Yes, sir.

Q. What do you understand by that passage now?

A. I understand that I had made a bargain to get this money from Wells, which I never done.

Mr. KEIGWIN.—That isn't quite what you said in that paper.

Mr. GORDON.—Q. Did you read that part of that affidavit?

A. I don't think I read it all over; I read part of it. I tell you I don't read good, and it takes me some time to read a piece of paper, and the other man seemed to have all there was to do with it.

Q. You swore to the paper, didn't you?

A. I don't know whether I did or not; I don't think so.

Q. Would you say you didn't swear to the paper?

A. I don't remember whether I did or not.

Q. Are you in the habit of signing papers, or signing them and swearing to them, without knowing what they contain? (Witness pauses.) Will you answer that, please?

A. No, I am not in the habit of signing them. I didn't understand exactly.

Q. Then why did you sign this paper, if, as you

(Testimony of Sedgwick Hoover.)

say now, you didn't know what was in it?

A. I didn't get the meaning out of it, I suppose.

Q. Let me ask you something. You talked with this gentleman here in the courthouse the day that paper was signed, didn't you?

A. Yes, sir. I done very little talking though; he done most of the talking.

Q. Then after he did the talking he sat down at the typewriter and wrote this paper out, didn't he?

A. Yes, sir, I believe he did.

Q. And gave it to you to read?

A. Yes, sir, I believe he did.

Q. And you sat there and read it?

A. I read part of it, I know; I don't know whether I read it all or not.

Q. If you didn't read it all, whose fault was it?

A. It was mine, I suppose.

Q. And then you signed it? A. Yes, sir.

Q. And now do I understand you to say that that last statement that I read from this affidavit, you say now that you didn't make it?

A. The way it means to me, I didn't make it, not the whole statement the way it is there.

Q. What did you say to Mr. Wade about your understanding as to what you were to do with this land?

Mr. BUNDY.—I object to that as incompetent, irrelevant, and immaterial, assuming that he said something to him about it, which isn't in evidence.

A. I don't remember what I told him—whether I took it up for speculation or how, I don't remember.

(Testimony of Sedgwick Hoover.)

Q. You admitted here a few moments ago that you swore to this statement in that affidavit: "When West spoke to me about taking up a timber claim he said there would be about \$300 in it for me." You admitted that a few moments ago.

A. Yes, he said I could sell it and make \$300 out of it.

Q. Did you take it up on speculation?

A. I don't know whether you would call it speculation or not. Whatever I think it is worth, I sell it for that money.

Q. Did you tell Mr. Wade that you took it on speculation?

A. I don't remember whether I did or not.

The EXAMINER.—I think we would better proceed, Mr. Gordon.

Mr. GORDON.—All right. We offer in evidence the affidavit identified by Mr. Hoover as having been signed by him.

(Marked Plaintiff's Exhibit No. 91A.)

Mr. BUNDY.—I object to it as incompetent, irrelevant, and immaterial, and as an attempt to impeach the evidence of their own witness, and as not shown to contain a true statement of the witness' evidence before the agent, whoever he was.

Mr. KEIGWIN.—We will prove the jurat by the officer who took it, afterwards.

Mr. GORDON.—We offer in evidence the timber and stone land sworn statement, dated March 25, 1902, identified by the witness as having been signed by him; the non-mineral affidavit, of the same date,

(Testimony of Sedgwick Hoover.)

also identified as having been signed by the witness; the notice of publication, dated March 25, 1902; testimony of witness given on final proof, dated June 18, 1902, identified by the witness as having been signed by him; the cross-examination attached to said testimony; the receiver's and register's certificates, dated June 18, 1902; the deed, dated July 14, 1902, made by Sedgwick Hoover and Lena Hoover, his wife, to A. E. Palmer, consideration \$1000; also the certified copy of the patent, dated January 28, 1904; all to the southwest quarter of section 28, township 6 north of range 6 east, Boise Meridian.

(Marked Plaintiff's Exhibit No. 91B to 91O, inclusive.)

Cross-examination.

(By Mr. BUNDY.)

Q. The first one that spoke to you about taking up a timber claim was your neighbor, Mr. Dean West, as I understand it? A. Yes, sir.

Q. And Mr. West at that time told you that you would have to pay the sum of \$25 to be located, as a location fee? A. Yes, sir.

Q. Some talk was had here about Mr. West saying to you, in substance, that there would be \$300 in it for you. I will ask you as to whether or not you understood from what Mr. West told you, and from what you knew, that Mr. West was expressing an opinion that the property could be sold at a profit of \$300?

A. Yes, sir, something similar to that.

Q. You didn't understand at all, did you, Mr.

(Testimony of Sedgwick Hoover.)

Hoover, that you were being hired to enter the land for them?

Mr. KEIGWIN.—Counsel for the complainant now enter upon record an objection to the leading of this witness by counsel for the defendants, upon the ground that the witness has manifested a disposition hostile to the complainant, and that he is therefore a friendly witness for the defendants, and counsel further give notice that if this line of cross-examination is continued, they will insist that the defendants have thereby made this witness their own witness.

A. No, sir.

Mr. BUNDY.—Q. What did you understand would be the way in which you would make \$300?

A. Why, take up a piece of timber land and prove up on it and sell it.

Q. At the time you went up to look at the land had you had any talk with Wells, West, Nelson, or anyone else, with reference to where you would get money to prove up?

A. No, sir, I don't think so.

Q. At the time you filed your first papers in the land office, had you then made any kind of agreement, Mr. Hoover, express or implied, in writing or verbal, by which you had agreed to turn the land over to any person, firm, or corporation as soon as you got title to it? A. No, sir.

Q. Had you made any such agreement as that at the time you made your final proof? A. No.

Q. Was there any agreement made by you, of any kind, in writing or oral, express or implied, with

(Testimony of Sedgwick Hoover.)

Wells, or with anybody else, prior to the day you made your final proof, by which you had obligated yourself to transfer this property to any person, firmⁿ or corporation whatever? A. No, sir.

Q. You testified that the very day you made final proof, you went to John I. Wells and asked him if he could help you out on the money question.

A. Yes, sir, just a few hours before I proved up.

Q. Prior to that time, had you ever had any talk with Wells about getting money to prove up?

A. No, sir.

Q. Had you ever had a talk with any other person about it? A. No, sir.

Q. Did you pay your share of the rig that took you up to look at the land? A. Yes, sir.

Q. Did you pay a filing fee?

A. Yes, sir, advertising fee and so forth.

Q. How much was the total amount that you paid, if you recall?

A. I don't remember whether it was \$7 or \$10.

Q. Whatever it was, you paid it?

A. Yes, sir.

Q. And nobody furnished you the money, by loan or otherwise? A. No, sir.

Q. At the time you entered this land, did you know what you were going to do with it?

A. No, sir, I did not.

Q. Didn't know whether you would hold it or sell it? A. No, sir.

Q. You spoke about having a bank account with one or two banks. I will ask you whether that was

(Testimony of Sedgwick Hoover.)

an open account, or money that you put in there on certificate.

A. I don't just remember; that has been quite awhile ago.

Q. You have had both kinds, then, in those banks?

A. Yes, sir.

Q. You say when you went up to Mr. Pritchard, at the time you began negotiating for the sale of this land, someone had told you about it. I will ask you whether or not it wasn't generally known here that Mr. Pritchard was in the market buying timber at that time?

A. I naturally supposed everyone knew it.

Q. A good many people had been entering claims, and Mr. Pritchard had been buying them?

A. Yes, sir.

Q. And it was generally known, wasn't it, that he was in the business of buying timber claims, and you knew it?

A. Yes, sir.

Q. Are you sure that it was Pat Downs that told you to go up there?

A. I am pretty certain it was.

Q. Did he tell you anything more than that Pritchard was buying and that he thought you could sell to him?

A. He told me if I would go up I could sell my timber land.

Q. And that was, of course, long after you had proved up?

A. Yes, sir.

Q. You were asked a question as to whether this all came out just as you expected except that you

(Testimony of Sedgwick Hoover.)

didn't get as much as they had promised you at the time of filing. Do you want to be understood, Mr. Hoover, as saying that anybody made you any promise as to what you would get, at the time you filed on this land? A. I don't just understand.

Q. Mr. Gordon asked you a question as to whether this all came out just as you expected except that he said that you didn't get as much as they had promised you. Had anybody promised you anything, at the time you made your filing? A. No, sir.

Q. The only reference to it was what Dean West told you? A. Yes, sir.

Q. Now, your attention has been called to what purports to be an affidavit; the jurat is supposed to be taken by a man by the name of Wade, special agent of the general land office. This purports to have been taken on October 1, 1907. Do you know what the occasion was at that time of being interviewed? Was that at the time of the Senator Borah trial? A. Yes, sir.

Q. And it was during the Borah trial?

A. Yes.

Q. You were subpoenaed here as a witness during the Borah trial?

A. Yes, sir, Mr. Borah was in here.

Q. Or was it during the time of the Haywood-Moyer trial?

A. It was something about the Steunenberg land business.

Mr. KEIGWIN.—Q. You say Senator Borah was in the room here? A. Yes, sir.

(Testimony of Sedgwick Hoover.)

Mr. BUNDY.—Q. Was he in the room at the time you made this so-called affidavit?

A. No, sir.

Q. Do you remember whether you were here as a witness in the Borah trial?

A. Yes, sir, I was subpoenaed from Caldwell.

Q. And while you were here as a witness, they took you up here in a room—

A. Yes, I had work down there; I was getting \$6 a day, and this man told me he would fix it so that I would be excused.

Q. They got this statement from you and told you you would be excused?

A. They excused me soon after that.

Q. Did they keep you here a number of days?

A. Yes, I don't just remember how long I was there.

Q. Mr. Hoover, at the time Mr. Wade had you upstairs in that room, was anybody else present there besides you and Mr. Wade?

A. I don't think there was.

Q. Was the door shut?

A. Yes, the door was closed.

Q. You say he did most of the talking?

A. Yes, sir.

Q. Can you recall, in substance, what he told you?

A. No, I can't remember all of it, but a whole lot.

Q. Did he tell you, in substance and effect, that if you would make an affidavit the way he wanted you to, that he would see that you were not prosecuted?

(Testimony of Sedgwick Hoover.)

Mr. KEIGWIN.—Counsel for the complainant ask counsel for the defense if you have taken this witness as a witness for the defense, and we object to the question on the grounds heretofore stated.

A. I don't just remember what he said. He said something to me, but I don't remember what it was now.

Q. In that conversation did he convey the impression to you that you were subject to being prosecuted?

Mr. KEIGWIN.—I object to that on the grounds heretofore stated, and on the further ground that the witness cannot be asked as to the impression conveyed, but as to the words used. Mr. Hoover, can you give the words Mr. Wade used? Do you remember what Mr. Wade said to you, in substance?

A. He said several things to me; I don't remember all of it.

Mr. BUNDY.—Q. State as near as you can the substance of what he said about your being liable to prosecution.

A. He asked me if I didn't know I was subject to prosecution, but I don't remember how he did explain it now.

Q. Did he say to you in that conversation, in substance and effect, that if you would sign this affidavit that they wouldn't prosecute you, as it had outlawed anyway?

A. He give me to understand something to the effect, but I don't remember just what he did say about it.

(Testimony of Sedgwick Hoover.)

Q. You can't give his words? A. No, sir.

Mr. KEIGWIN.—Q. Did he say it was outlawed?

A. I don't remember whether he did or not.

Q. Did Mr. Wade say to you that if you had committed any offense it was outlawed?

A. I don't remember the words he did use.

Mr. BUNDY.—Q. Then about the nearest you can tell is that he asked you the question if you didn't know that you were subject to prosecution?

A. The fact is that he done all the talking, and I didn't take much interest in it; my mind was on my work anyway, and I was bothered.

Q. You said in this affidavit that you paid Downs a location fee of \$25 after coming back from the land. Is that your recollection now, or how is that?

A. I never paid it to him up there.

Q. Do you know whether you paid it before final proof or not? A. No.

Q. Do you mean you don't know, or what?

A. I didn't pay it till after I proved up.

Q. You never had any talk with Wells, as I understand it, about this timber business at all until the day of proving up.

A. No, I never did, not with Wells.

Q. You never had any talk with Wells at all prior to the original filing, did you? A. No.

Q. But after you came back from the land you went to Wells to have your papers made out?

A. Yes.

Q. At that time when you talked with Wells, did he say anything to you about what you should do

(Testimony of Sedgwick Hoover.)

with the land when you got it? A. No, sir.

Q. Did you have any understanding with him at that time about selling it to anyone, or about his advancing any money to you? A. No, sir.

Q. The first talk you had with him at all with reference to it was the day you proved up?

A. Yes, sir.

Q. I wish you would try and recall a little more, Mr. Hoover, just how this man Wade got this affidavit. You said he did most of the talking. Tell us in substance what he talked about, what he said?

A. Well, I am honest with you about it. He done all the talking and that is about all I can remember.

Q. And you read it partly over, but not entirely?

A. No, I didn't read it all.

Q. And if you had read that last part would you have signed this affidavit?

A. I don't think I would.

Q. Mr. Wade didn't read it to you?

A. No, I don't think he did.

Q. The impression you had, when you were in the room with Mr. Wade, was that he represented the Government, and that he thought you had committed some crime, and he was going to protect you if you came through, as they say, and signed the necessary papers?

A. Something to that effect, yes, sir.

Q. In the first paper you filed, on March 25, 1902, Mr. Hoover, you made this statement, among others: "That I have not, directly or indirectly, made any

(Testimony of Sedgwick Hoover.)

agreement or contract, or in any way or manner, with any person or persons whomsoever, by which the title I may acquire from the Government of the United States may inure in whole or in part to the benefit of any person except myself." Was that true at the time you made it? A. Yes, sir.

Q. Was that same thing true at the time you made your final proof? A. Yes, sir.

Q. It is alleged in the complaint in this action, Mr. Hoover, that you made entry of this timber and stone claim, not for the benefit of yourself, but for the benefit of the Barber Lumber Company and the other defendants in this action. Is that true or false? A. It is false.

Q. And it is charged in this bill of complaint that you went to the land office, entered this land, and testified falsely, at the request of the Barber Lumber Company and the other defendants in this action, or some of them. Is that true or false?

A. It is false.

Q. The defendants in this action are, the Barber Lumber Company, J. T. Barber, S. G. Moon, John Kinkaid, William Sweet, Horace S. Rand, and A. E. Palmer. Do you know any of those people?

A. I know of them. I don't know them. I am not acquainted with any of them, I think.

Q. Did any of the people I have named ever have any talk with you at all with reference to entering this timber claim? A. No, sr, I don't think so.

Q. Did you enter it for their benefit, or for the benefit of any of the defendants?

(Testimony of Sedgwick Hoover.)

A. No, sir, I did not.

Redirect Examination.

(By Mr. KEIGWIN.)

Q. Mr. Hoover, you say that the charge in the bill is false that you agreed to commit perjury at the final proof, for the sake of these people?

Mr. BUNDY.—I didn't ask him that question at all.

Mr. KEIGWIN.—Q. Is that charge false?

A. I don't understand exactly.

Q. You don't understand that? Did you testify falsely at your final proof?

A. No, sir, I did not.

Q. You did not? A. No, sir.

Q. Had anyone, before you made your application here, promised that you would get any particular sum out of the land if you sold it?

A. No, sir; it was generally understood that a man could make about \$300.

Q. How did you understand that?

A. From parties that had been up and taken up timber claims.

Q. When you were asked to talk to Mr. Wade, in October, 1907, did Mr. Wade tell you that any prosecution for any offense you had committed in this matter was outlawed?

A. I don't remember whether he did or not.

Q. Didn't you say just now to Mr. Bundy that Mr. Wade told you that they weren't going to do anything with you because your offense, whatever it was, was then outlawed?

(Testimony of Sedgwick Hoover.)

Mr. BUNDY.—He didn't tell me any such thing.

Mr. KEIGWIN.—I am asking the witness; I prefer to get my information from the witness.

A. Something to that effect.

Q. Then you did say that to Mr. Bundy, didn't you?

A. I said something to that effect, yes, sir.

Q. You told that to Mr. Bundy, this gentleman who has just examined you? A. Yes, sir.

Mr. BUNDY.—What do you mean—here or when?

Mr. KEIGWIN.—Here.

Mr. BUNDY.—Do you mean to say that we have had any other conversations?

Mr. KEIGWIN.—I don't mean to say anything, Mr. Bundy, but what appears on the face of it.

The EXAMINER.—Proceed, gentlemen.

Mr. BUNDY.—That is your system of making charges, is it?

Mr. KEIGWIN.—No, I am not making charges against anybody.

Q. Mr. Hoover, had you committed any crime then? A. I don't think so.

Q. Did you then think you had committed any crime? A. No, sir.

Q. Did you believe that you had committed an offense for which you were liable to be prosecuted?

A. No, sir, I did not.

Q. Then you didn't know what Mr. Wade was talking about when he said they weren't going to prosecute you for your offense, did you?

(Testimony of Sedgwick Hoover.)

A. I didn't understand just what he did say.

Q. I think you said to Mr. Bundy that Mr. Wade gave you the impression that you had committed some crime?

A. Yes, he did, in his conversation.

Q. Now, what crime was that? Did he imply that you had committed a murder, or a rape, or a burglary? Did he say anything about anything of that kind? A. No, sir.

Q. What crime did Mr. Wade say to you that you had committed, or give you to understand that you had committed?

A. I think the way I understood it, he meant that I had sold the land, or something to that effect.

Q. Well, you had sold the land, hadn't you?

A. Yes, sir.

Q. Had you committed any crime in selling the land? A. No, sir, I don't think so.

Q. Did you think so then?

A. No, sir, I didn't think so.

Q. Then you were not scared by Mr. Wade saying you had committed some offense?

A. No, I wasn't scared.

Q. You weren't scared at all? Being an innocent man, and having a clear conscience, it didn't make any difference to you about what Mr. Wade thought, did it? (No answer.)

Q. Mr. Hoover, can't you read that last paragraph in there (showing witness affidavit), beginning here, "At the time I filed on the land I understood that I was taking up for someone else, and that I was to

(Testimony of Sedgwick Hoover.)

get \$300 for taking up the land. My understanding was with John I. Wells." Can you read that, which is the last paragraph in the affidavit which has heretofore been shown to you, and which you admit having signed? A. Yes, I can read it.

Q. Will you say now, positively, that you did not read that last paragraph before you signed that affidavit?

A. I don't know whether I read all of it over or not.

Q. Will you say positively that you did not read that last paragraph, those two last sentences, before you signed it?

A. No, I wouldn't say positively.

Q. Well, will you say that it is possible that you did read them?

A. It may be possible, yes, sir.

Q. And if you read them you understood them?

A. Yes, sir, if I read anything over close I understand it, generally.

Q. You wouldn't have signed that if you didn't understand it, would you?

A. I wouldn't be very apt to sign anything that I thought was going to be a detriment to me.

Q. You wouldn't have signed that if you hadn't understood it, would you?

A. No, I don't think I would.

Q. And you meant at the time to tell the truth, I suppose?

A. I mean all the time to tell the truth, if I can.

Q. You meant at the time you signed this affidavit

(Testimony of Sedgwick Hoover.)

to tell the truth, did you not?

A. (After a pause.) Yes, I meant to tell the truth.

Q. It was true?

A. If I understood it that way at that time, it was supposed to be all right.

Q. And you believed that it was true?

(No answer.)

Mr. GORDON.—There is one question I wish to ask you. I understood you to say that the day you made your final proof you went to the land office and the witnesses were all there. Is that correct?

A. I don't know whether they was all there or not; some of them was there.

Q. And you left them there and went to John Wells' office and got the money? Is that correct?

A. Yes, sir.

Q. And that you hadn't talked to John Wells about getting the money before that?

A. No, sir, I had not.

Q. Who did you expect to have that money at the land office when you went there?

A. I don't know as I expected anybody to have it there.

Q. You went there to make your final proof, didn't you? A. Yes, sir.

Mr. KEIGWIN.—Q. You knew that you would be expected to pay \$412.50, didn't you?

A. Yes, sir.

Q. Did you have \$412.50 in your pocket?

A. Not at that time, no, sir.

(Testimony of Sedgwick Hoover.)

Recross-examination.

(By Mr. BUNDY.)

Q. What did you intend to do, Mr. Hoover, when you went to the land office—get an extension or what—in the absence of having the money? I mean to say, when you went to the land office to make final proof, what did you intend to do—relinquish, or get an extension, or what? Just tell us what was in your mind? A. I intended to get the money.

Q. And did you know where you expected to get it? A. No, not just at that time.

Q. Did you expect that you might meet John Wells there and get the money from him?

A. Yes.

Q. And when he wasn't there you went to his office? A. Yes.

Q. They have asked you about this last part of this affidavit again. "At the time I filed on the land I understood that I was taking it up for someone else, and that I was to get \$300 for taking up the land. My understanding was with John I. Wells." You have testified that you intended to tell the truth as you understood it. If you had understood that as it reads now would you have signed that affidavit? A. No, sir.

Q. Is it true that at the time you filed on this land you understood that you was taking it up for someone else?

A. I was taking it for myself at that time.

Q. Was it true that at the time you filed on this land anyone had promised to give you \$300 for tak-

(Testimony of Sedgwick Hoover.)

ing up the land? A. No, sir.

Q. Was it true at the time you filed on this land that you had that understanding with Mr. Wells?

A. No, I had no such understanding.

Mr. KEIGWIN.—Q. Then at the time you signed and swore to this affidavit you swore to it falsely, did you?

Mr. BUNDY.—I object to that as incompetent, irrelevant and immaterial, and asking the witness to testify to a conclusion, and trying to impeach their own witness.

Q. (Last question read by stenographer.)

A. It didn't seem to have the meaning then that it does now to me.

Q. That is the best answer you can make?

A. Yes, sir.

Q. That you understood it one way then and another way now? A. Yes, sir.

The EXAMINER.—Let me ask the witness a question. At the time you went to the land office to make your final proof, did you expect to meet John I. Wells there?

A. No, I did not.

Mr. BUNDY.—A moment ago, in answer to a question I asked you, you said you thought that John I. Wells might be there. Now what do you mean, in answer to the Examiner's question, that you didn't expect to meet him? In other words, let me ask you this question: Were you looking for John I. Wells that day to get money to make final proof?

A. No, sir.

(Testimony of Sedgwick Hoover.)

Q. When you went to the land office to make final proof did you think that John I. Wells would be there.

The EXAMINER.—That is the same question I asked him, substantially.

Mr. BUNDY.—In your papers here I think John I. Wells was named as one of your witnesses.

Mr. GORDON.—No, I don't think he was a witness; I think he introduced him at the land office, but I don't think he was a witness.

Mr. BUNDY.—I thought you said he was a witness. I want to understand your evidence, Mr. Hoover. It seems to be a little mixed—I don't think intentionally so, but I think you possibly misunderstood some of the questions. Now, you say on the day of your final proof you went to the land office, and do I understand that you went there before you had gone to Wells to get the money, or after?

A. Before.

Q. And then when you went there did they ask you certain questions, and did you answer them?

A. No, I don't think so.

Q. What did you do at the land office before you went to Wells, if anything? Did you act as witness for the other gentlemen that were there?

A. No, I was up there before they had started to make out the papers.

Q. Did you stay there until your papers had been made out, or how was that?

A. I don't remember whether I had my papers before I went over to Mr. Wells or not.

(Testimony of Sedgwick Hoover.)

Q. You went from there to Wells' office to get the money? A. Yes, sir.

Q. And you hadn't been to Wells' office any time before? I mean about getting money? A. No.

Q. How did you expect to make your final proof there at the land office? Did you know that you had to pay the money down?

A. Yes, I knew I had to pay the money for the land.

Q. Then, as I understand you, you went to the land office, and before you had made your final proof you left there and went up to Wells and got the money, and then came back and made your final proof. Is that correct? A. Yes, sir.

Q. What did you go to the land office for before you got the money?

A. I went up there to be a witness for the other men.

(Witness excused.)

At this time court adjourned until ten o'clock A. M., Thursday, February 18, 1909, at which time the taking of testimony was resumed, the Examiner and counsel for the respective parties being present.

[Testimony of W. S. Wade, on Behalf of the Complainant.]

W. S. WADE, produced as a witness on behalf of the complainant, being first duly sworn, testified as follows:

Direct Examination.

(By Mr. KEIGWIN.)

Q. What is your full name, Mr. Wade?

(Testimony of W. S. Wade.)

A. William S. Wade.

Q. What is your occupation?

A. Special agent of the United States Land Office.

Q. How long have you held that position, Mr. Wade? A. Since April, 1903.

Q. What, in a general way, is the nature of your duties in that position, Mr. Wade?

A. Investigating any frauds committed upon public lands.

Q. And reporting what you find to the Commissioner of the General Land Office?

A. Yes, sir.

Q. How long have you been stationed at Boise?

A. Most of the time since July, 1906.

Q. Do you know one Sedgwick Hoover?

A. Yes, sir.

Q. How long have you known him?

A. I am not personally or intimately acquainted with him. I met him.

Q. How long ago?

A. I took an affidavit from him in 1907.

Q. I show you an affidavit, which is marked Plaintiff's Exhibit No. 91A, and ask you if you recognize that affidavit? A. Yes, sir.

Q. Is that your signature attached to the jurat?

A. It is.

Q. As special agent of the General Land Office, you have authority to administer oaths, take oaths, have you? A. Yes, sir.

Q. That is, in any matter which you are investigating?

(Testimony of W. S. Wade.)

A. In any matter pertaining to pubic lands.

Q. Are you able to say from your inspection of that affidavit that it was subscribed and sworn to before you? A. It was.

Q. By Sedgwick Hoover? A. Yes, sir.

Cross-examination.

(By Mr. BUNDY.)

Q. How long have you been in Boise looking up this case, Mr. Wade?

A. I have been in Boise since the 7th day of July, 1907, practically all of the time. Of course I have been away for a month or two at a time, sometimes as high as three months at a time.

Q. And how much of the time have you been engaged upon the trial of this case?

A. I couldn't say. I have worked on this case a number of times. At different times, when I would have nothing else to do in the line of my work, I would take up this case.

Q. Have you interviewed practically all of the entrymen?

A. I have interviewed a great many of them.

Q. And have you interviewed a great many of them during the past three months?

A. No, sir.

Q. You interviewed them before?

A. Yes, sir.

Q. Have you interviewed any of them within the past three months?

A. Very few; I expect I have interviewed some.

Q. Have you any people working under you?

(Testimony of W. S. Wade.)

A. No, sir.

Q. How many special agents of the land office department are in attendance on this trial?

A. Two.

Q. And how many department clerks, or other assistants?

A. There is two land office men on this case.

Q. And how many other assistants, other than the land office men, besides the attorneys of record?

A. I believe there is two that I know of.

Q. So that makes four altogether, besides Mr. Gordon and Mr. Keigwin? A. Yes, sir.

Q. What are those four men doing around here, Mr. Wade?

A. I couldn't tell you what they are doing, except myself, and I know what Mr. Dunning is doing.

Q. You don't know what the others are doing?

A. I see them, yes.

Q. Do you know what they are doing?

A. I guess I do. I know by seeing them, that is all.

Q. You testified a moment ago, Mr. Wade, that you didn't know what they were doing.

A. I said I didn't know for sure.

Q. That is your evidence now, that you don't know for sure what they are doing around here?

A. I see them every day. I think one of them is in the hall watching to see that some of the defendants don't caution the witnesses.

Q. Which one is doing that noble calling?

A. I think his name is Melrose.

(Testimony of W. S. Wade.)

Q. What are the rest of them doing?

A. Mr. Dunning is segregating the papers that are to be introduced in evidence as exhibits.

Q. That is two of them. What is the third doing?

A. I have practical charge of the witnesses that are to be put on the stand, that is, arranging, and so forth.

Q. You have charge of the witnesses? That is three of them. What is the fourth one doing?

A. Mr. Watt was, prior to instruction by the Master not to do so, interviewing witnesses and taking a short statement as to what they would testify to on the stand.

Q. What is he doing now?

A. He may be doing that; I don't know. He is not in the same office as I am.

Q. Do each one of you fellows have separate offices?

A. No, Dunning and I office together.

Q. So that since the trial has been going on you have interviewed no witnesses?

A. I expect I have talked to two or three.

Q. Was you in attendance at the trial here of Senator Borah? A. I was.

Q. Was this man Sedgwick Hoover subpoenaed as a witness in that case?

A. I wouldn't be positive as to that; I think he was.

Q. And while he was here as a witness you procured this so-called affidavit of October 1st?

(Testimony of W. S. Wade.)

A. I procured an affidavit from Sedgwick Hoover on the first day of October, 1907.

Q. And that was while he was here under subpoena as a witness in the Borah trial?

A. I couldn't say as to that.

Q. Don't you know, Mr. Wade?

A. I do not.

Q. Did you have charge of subpoenaing the witnesses on that trial? A. I did not.

Q. Did you have charge of the witnesses in that case as in this? A. I did not.

Q. What were your duties on the Borah trial?

A. I prepared the record evidence in the Borah trial.

Q. Anything else?

A. Interviewed some witnesses.

Q. How many did you interview?

A. I couldn't say.

Q. Did you take affidavits from all you interviewed? A. I did not.

Q. Did you take affidavits from any other than Mr. Hoover? A. I think I did.

Q. What other affidavits did you take?

A. I couldn't tell you without referring to my record.

Q. You don't know whether Hoover was here as a witness or not? A. I think he was.

Q. He wasn't called as a witness?

A. I don't know as to that. I think I looked over the list last night of witnesses that were in the Borah trial, and I think I remember seeing Sedg-

(Testimony of W. S. Wade.)

wick Hoover's name on that list.

Q. At the time of the Borah trial, Mr. Wade, you examined all your witnesses and took statements from them, with the view of putting them on the stand and having them testify, all to the effect that any entryman who sold or disposed of his entry, or any interest in it, subsequent to filing and prior to final proof were violating the law, did you not?

A. Those statements—

Q. You can answer the question, I think, yes or no.

A. —were practically all taken during the Grand Jury investigation, not during the trial.

Q. Well, the Grand Jury investigated this case upon the theory that any entrymen who sold subsequent to original filing and prior to final proof had violated the law?

A. I couldn't say.

Mr. KEIGWIN.—That question is objected to on the ground that it is manifestly irrelevant and incompetent.

A. (Continued.) I do not know the theory of the Grand Jury investigation.

Q. Do you know the theory of the land department?

A. Yes, sir.

Q. And the theory of the land department has been, up to now, that any person who sold his claim prior to final proof forfeited his right?

A. Not necessarily so, no, sir.

Q. What do you mean by "not necessarily so?"

A. If the entry was made in good faith, and there was no circumstances showing that there was a prior

(Testimony of W. S. Wade.)

agreement, it would be passed.

Q. Since the Williamson case?

A. Before the Williamson case.

Q. How long before?

A. Since I have been in the service.

Q. So that the land department has not deemed it unlawful for an entryman to sell his claim after he made original entry and before he made final proof?

Mr. KEIGWIN.—That is objected to upon the ground that it is irrelevant and immaterial, and for the further reason—

The EXAMINER.—Has this any bearing upon the case at bar, gentlemen?

Mr. BUNDY.—About as much as other things we have had.

The EXAMINER.—We don't want to spend time on the Borah trial.

Mr. BUNDY.—If the Examiner will change the ruling and confine us to the rules, I will be very glad.

Mr. KEIGWIN.—It is objected to on the further ground that the position or theory and holding of the land department must be evidenced by the declarations, in writing, of the authorized officers of that department; and the further objection is made that this course of cross-examination is not responsive to anything in the direct examination of this witness.

Mr. BUNDY.—This is all preliminary, simply leading up to what I want to ask him about the manner in which he examined this man Hoover. You

(Testimony of W. S. Wade.)

have got here what you claim to be a voluntary affidavit, which we claim is not a voluntary affidavit.

Mr. KEIGWIN.—We simply called this witness to identify that affidavit and establish the fact that it was taken.

Mr. BUNDY.—He appearing here as having signed the jurat, I think we are entitled to know something about it. And in your examination and discussion with Mr. Hoover, as well as with other witnesses, I presume, Mr. Wade, that you went over the matter some first.

A. I expect I questioned him.

Q. And do you recall having quite an extended conversation with him? A. No, sir.

Q. You asked him questions and he gave you answers? A. Yes, sir.

Q. This affidavit you have here appears to be in narrative form? A. Yes, sir.

Q. Doesn't show questions and answers. So you don't pretend that this is his language?

A. That affidavit is statements Mr. Hoover made to me.

Q. You asked him questions and he gave you answers?

A. That is always done before the affidavit is taken.

Q. I didn't ask you what is always done. You asked Mr. Hoover questions, did you?

A. Not while taking the affidavit—in talking it over before.

Q. Did you ask Mr. Hoover some questions in

(Testimony of W. S. Wade.)

the sweat-box?

A. In my office I expect we talked this over.

Q. Did you?

A. I don't know; I think we did.

Q. You think you asked him some questions?

A. Yes, sir.

Q. And you think he made answers to those questions? A. Yes, sir.

Q. And you think this affidavit is in the narrative form?

A. That affidavit is what Mr. Hoover told me, practically the same way it is in there. I would ask him to explain a certain thing, and I would write it down as he would tell me.

Q. So that you wrote this down just as he gave it to you, word by word, sentence by sentence. Did you or didn't you?

A. Maybe some things that were said are not in there.

Q. Don't you know, Mr. Wade, that there were a great many things said that are not in there?

A. There perhaps were.

Q. You asked him questions in your interview?

A. Yes, sir.

Q. And he answered them? A. Yes, sir.

Q. You didn't put the question down or the answer? A. I did not.

Q. Then you went on and questioned him more?

A. Yes, sir.

Q. Then after you had got through questioning him, and he had got through answering them, you

(Testimony of W. S. Wade.)

proceeded to write out the substance of what he had told you?

A. No, sir, I would ask him about a certain condition, and he would tell me about that, and it was the material things that I put in the affidavit.

Q. Do you mean to testify that every sentence in that affidavit is an answer to a question put by you?

A. Those are his words.

Q. Taken down in shorthand? A. No, sir.

Q. Taken down on a typewriter?

A. Yes, sir.

Q. And do you pretend to say, Mr. Wade, that this affidavit, which purports to be in the narrative form, contains the language used by Mr. Hoover in answer to questions you asked him?

A. Practically so.

Q. Is it so or isn't it so?

A. That is the substance and meaning of everything Mr. Hoover said.

Q. Who selected the words in which this affidavit is framed, you or Mr. Hoover?

A. I usually try to take down the witness' own language.

Q. I didn't ask you what you usually tried to do. I will ask you again, whose words are these in this affidavit, which is the narrative form?

A. I can only make the same answer, Mr. Bundy. I don't remember, since October 1, 1907, every word a man said to me. That is Sedgwick Hoover's statement. He knew what everything in there was before he signed it. He either read it, or I read it to him.

(Testimony of W. S. Wade.)

Q. Which was the case? A. I don't know.

Q. We will go back over this again, Mr. Wade, if it takes all summer. "Sedgwick Hoover, of lawful age, being duly sworn and on his oath deposes and says, that his residence is in Caldwell, Idaho. That he is the identical Sedgwick Hoover who made a T. & S. Cash Entry, No. 1874, June 18, 1902." Is that Hoover's language or is that yours?

A. I think that is my language; I know it is.

Q. "That Dean West was the first person who spoke to him about taking up a timber claim."

A. That is Hoover's language?

Q. Was that in response to a question?

A. I expect it was.

Q. Do you remember whether it was or not?

A. I think it was.

Q. What was the question?

A. I don't know. It more than likely was, "Who first spoke to him about taking up a timber claim?"

Q. Did he say "Dean West," or did he put in all the rest of this? A. All that sentence.

Q. Read the sentence.

A. "That Dean West was the first person who spoke to him about taking up a timber claim."

Q. That is what he said?

A. I expect he said that "Dean West was the first person that spoke to me about it."

Q. And you changed it to make it in the third person, did you?

A. I answered the question.

Q. Do you mean to say that that is Hoover's lan-

(Testimony of W. S. Wade.)

guage or yours?

A. I stated what I thought Hoover said.

Q. Then after you had asked a lot of questions, the answers to which you didn't take down, you proceeded to go over it with him again, you at the typewriter, you would ask him a certain question and the answer he would give you, you would put in this narrative form?

A. I would ask Mr. Hoover, lead him out, as to the circumstances of his taking up that claim, and he would answer, and I would take those answers down. They may not have been answers; they may just have been his own statements. I took the substance of his statement there in that affidavit.

Q. So that what you put down here in this affidavit which he signed was the substance and effect of what he told you, as you understood it?

A. And Mr. Hoover read, or I read to him, that affidavit, before he signed it.

Q. I will ask you again. Does this affidavit, in the form it is here, was that narrative form put down by you, and does it constitute the substance and effect of what Mr. Hoover told you on that interview?

A. I can only answer that by stating that the way I always do, I talk over with a man—

Q. We don't care what you always do. We know pretty well what you always do. That is one thing that is pretty well known, what you always do. I want you to tell this Court, and to do it in just as few words as you can, whether this affidavit of October 1, 1907, is your statement of what Sedgwick Hoover

(Testimony of W. S. Wade.)

told you at that interview.

A. Let me have that affidavit (witness takes affidavit). The first paragraph is my statement. The other part is quotation, barring typographical or immaterial changes.

Q. All of the balance of it then is a quotation from the exact words of Sedgwick Hoover?

A. That is not what I said at all.

Q. A quotation implies the use of another person's language. Is the balance of this the language of Mr. Hoover?

A. Barring connecting words, or something of that kind, that is the substance of Mr. Hoover's statements.

Q. Who furnished the connecting words or changed the language, if any change was made?

A. I did, if there was any made.

Q. And all of this came while you was at the typewriter asking him questions and putting down the answers?

A. While I was taking his affidavit, yes.

Q. Didn't you know at that time that Sedgwick Hoover was unable to read?

A. I don't recall that I did.

Q. Didn't he tell you that he couldn't read.

A. He did not.

Q. How many times did you see Hoover that time while he was here attending the Borah trial?

A. I saw him once that I know of; I don't recall any other time.

Q. Did you go to him, or did he come to you?

(Testimony of W. S. Wade.)

A. I expect I went to him.

Q. Don't you recall that he came to you and said he wanted to get away, that he had a job down here and wanted to get away? A. He may have.

Q. Don't you recall that, to accommodate Mr. Hoover and let him get away, you took that affidavit and let him go?

A. I don't recall that circumstance.

Q. Are these witnesses that have been called to the stand here since this trial has been going on witnesses that have been interviewed by some one of you four gentlemen in the back room?

A. I couldn't say as to that; they haven't been interviewed by me.

Q. Some of them have.

A. I expect I talked to two or three; I have not interviewed any except one that I know of.

Redirect Examination.

(By Mr. GORDON.)

Q. There is one question that I wish to ask you, Mr. Wade. You said something about having charge of the witnesses, arranging for the witnesses to be put on the stand. You don't mean seeing the witnesses? A. No, sir.

Mr. KEIGWIN.—Mr. Wade, how many of the witnesses who have been called, or who are on the list to be called, have you seen?

A. During this trial?

Q. No, at any time.

A. That would be impossible for me to state. I couldn't state it. At different times since 1906, I

(Testimony of W. S. Wade.)

have talked to a great many of them.

Q. You have seen the list of witnesses subpoenaed in this case, have you not? A. Yes, sir.

Q. Do you know them all?

A. No, sir, I do not.

Q. Have you seen them all? A. No, sir.

Q. Have you seen half of them?

A. I should say that I had seen half of them, since 1906.

Q. When you took this affidavit, do you remember whether Sedgwick Hoover read it over or not before he signed it?

A. He either read it over or I read it to him, I wouldn't say which it was.

Q. Did he seem to understand it?

A. He did.

Q. Did he seem to know what he was talking about? A. Yes, sir.

Q. Did he seem to understand the fact that he had committed a violation of the law?

A. Yes, sir, he did.

Q. He understood what he signed?

A. Yes, sir, he did understand exactly what he signed.

Recross-examination.

(By Mr. BUNDY.)

Q. Did you have any talk with him about immunity? A. No, sir.

Q. Tell him it was outlawed against him?

A. I did not.

(Testimony of W. S. Wade.)

Redirect Examination.

(By Mr. KEIGWIN.)

Q. Did you promise him anything?

A. I did not.

Q. Did you threaten him?

A. I did not.

Q. Were you present during the examination of Sedgwick Hoover yesterday?

A. I came into the room once, but I was only here about a minute.

Q. You were here when he identified you?

A. Yes, sir.

Q. And you left immediately afterwards?

A. Yes, sir.

Q. On my suggestion? A. Yes, sir.

(Witness excused.)

[Testimony of Edward E. Butler, on Behalf of the Complainant.]

EDWARD E. BUTLER, produced as a witness on behalf of the complainant, being first duly sworn, testified as follows:

Direct Examination.

(By Mr. GORDON.)

Q. Your name is Edward E. Butler?

A. Yes, sir.

Q. Where do you reside, Mr. Butler?

A. Twelve or thirteen miles from here, down the valley.

Q. How long have you resided there?

A. Five years this coming March.

Q. Did you reside in Boise prior to that time?

(Testimony of Edward E. Butler.)

A. I did.

Q. How long had you resided in Boise in 1902?

A. About twelve years, I think. I came here in '90.

Q. I just wanted to know generally.

A. Yes, I came here in '90, in the spring of '90.

Q. What is your occupation?

A. Farming.

Q. What was your occupation in 1902?

A. In the ice business and sprinkling business.

Q. You took up a claim under the Timber and Stone Act, did you, Mr. Butler? A. I did.

Q. I show you timber and stone land sworn statement, dated March 28, 1902, and ask you if you signed that statement?

A. I must have, yes, sir.

Q. Did you or didn't you? That is the first paper you filed in the land office.

A. Yes, that is my writing.

Q. I show you non-mineral affidavit, dated March 28, 1902, and ask you if you signed that?

A. Yes.

Q. I show you the testimony given by Edward E. Butler on final proof, dated June 24, 1902, and ask you if that is your signature?

A. That is my writing.

Q. I show you the cross-examination, which isn't signed—I show you deed, dated June 19, 1903, and ask you if that is your signature to that deed?

A. Yes, sir.

Q. Is that the signature of Elvie M., your wife?

(Testimony of Edward E. Butler.)

A. I think it is; I couldn't say positively, but I guess it is.

Q. Mr. Butler, who first spoke with you about taking up a timber claim?

A. Mr. Wilmot, I believe.

Q. Mr. Ery A. Wilmot?

A. Yes, E. A. Wilmot.

Q. What did he say to you about it?

A. He is an old friend of mine, and I hadn't seen him for quite awhile, and he said he had been up in the Basin to take up a timber claim. I didn't talk to him over five minutes.

Q. Did he tell you how much could be made out of it?

A. No, he didn't, not to my knowledge.

Q. Did he say anything else?

A. He might have; I don't remember whether he did or not.

Q. Did he tell you to see anybody, or that you could see somebody that could tell you about this, or what did he say?

A. I think he did; I think he told me he was located through Mr. John I. Wells. Anyhow, he directed me to go to Mr. Wells.

Q. That is the John I. Wells sitting here?

A. Yes, sir, John I. Wells.

Q. Did you go to see Mr. Wells that day?

A. No, I didn't for several days, I don't think.

Q. Where did you go to see Mr. Wells?

A. I went to his office.

Q. Had you ever had any business with Mr. Wells before that?

A. Never.

(Testimony of Edward E. Butler.)

Q. Did you know Mr. Wells?

A. I did not—oh, I might have known him, it's just possible.

Q. You didn't know him to speak to, never met him?
A. No.

Q. When you went to Mr. Wells' office what did you say to him?

A. I couldn't tell you what. I believe I did ask—I did ask him if there was any more timber claims up in that country, and I think he told me there was three or four, something of the kind.

Q. This was in March, 1902? A. Yes.

Q. He told you there were three or four up there?

A. To the best of my knowledge, yes, that is about what he told me, yes, that there was three or four left.

Q. Did you make arrangements with him to be located?
A. Yes.

Q. What were those arrangements?

A. Well, he would locate me for \$25; that is what I paid him.

Q. Did he tell you who would locate you?

A. Yes, sir.

Q. Who? A. Patrick Downs.

Q. Did you go up alone, or did you go with somebody else?
A. I went with some other fellows.

Q. Who went with you?

A. Charlie Patterson and I, and there was two other fellows; I disremember their names, I couldn't tell you now.

Q. Was Mr. William H. Louen along?

(Testimony of Edward E. Butler.)

A. I couldn't tell you; I don't remember the name.

Q. Was Mr. Smith Barker along?

A. Yes, I remember him.

Q. Was John I. Wells up there with you?

A. No, sir.

Q. He didn't go over the land with you the day you located? A. No.

Q. Who arranged for that party?

A. Why, I don't know; I couldn't say for sure. I and Charlie Patterson went down to the livery barn and hired the rig. I think those other fellows chipped in.

Q. Did you know those other fellows before?

A. I knowed Barker.

Q. You didn't know the other man?

A. No.

Q. Had you ever talked to Mr. Barker about it?

A. No, not that I know of.

Q. How did you know they were going, and how did you know they were going with you?

A. I couldn't say for sure, it has been so long ago.

Q. Did you start from Wells' office?

A. No, we started from the Ransom corral, on Tenth and Bannock.

Q. These gentlemen were there? A. Yes.

Q. One of these men you had never known before? A. No.

Q. Did Mr. Wells give you a note to Mr. Downs?

A. I believe he did.

Q. Was it in a sealed envelope?

(Testimony of Edward E. Butler.)

A. I couldn't tell you; I think it was.

Q. And you took that to Mr. Downs?

A. Yes, sir.

Q. Where did you meet Mr. Downs?

A. At the Luna House, Idaho City.

Q. Had you known him before?

A. No, sir.

Q. Had you ever seen him before, that you know of? A. Not that I know of, no.

Q. How far was your claim from Idaho City?

A. I couldn't tell you; I think it was something like three or four miles.

Q. Did you walk over there?

A. I think we drove the rig most of the way; I am not positive.

Q. I mean from Idaho City?

A. Well, I know. I say I think we drove the rig part of the way.

Q. Did you have any talk with Mr. Downs about locating you before you left Idaho City?

A. I don't know whether we did or not. It was night when we got there, and I didn't see him; it must have been eight o'clock, I guess.

Q. Did you give him the letter?

A. Yes, sir.

Q. And he directed you to be ready to start next morning? A. Yes, sir.

Q. Then he took you out to some claims?

A. Sure.

Q. And showed you a claim? A. Yes, sir.

Q. Which one of the party was located first?

(Testimony of Edward E. Butler.)

A. I couldn't tell you.

Q. When you got to the claim you were located on, were you told that this was the claim for you to locate on, and asked you how you liked it?

A. I was, certainly.

Q. And you took the claim? A. I did.

Q. Did Mr. Downs write a description of your claim and hand it to you? A. No, sir.

Q. Did he give the description of all of the claims to one party, or don't you know about that?

A. No, I don't think he did.

Q. Then when you left there you didn't have a description of the property?

A. No, sir; I don't think we did, because Mr. Downs came down with us.

Q. He came down with you? A. He did.

Q. Did you go to Mr. Wells' office the next morning after you returned to Boise?

A. I think we did.

Q. Were the other gentlemen that went with you at Mr. Wells' office at that time?

A. I don't remember whether they were or not.

Q. Do you remember whether any of them were there, or whether you went there alone?

A. I don't remember.

Q. Was Mr. Downs there?

A. I couldn't say positively whether I talked to Mr. Wells or Downs; I know I went there, and there is where I got the numbers, and that is about all I remember about it.

Q. Who prepared this sworn statement for you?

(Testimony of Edward E. Butler.)

Was that prepared in that office, at Mr. Wells' office, the morning after you came back from Idaho City?

A. I couldn't tell you until I read it.

Q. I will state that that is the first paper you filed in the land office, that is your entry paper (hands witness paper).

A. No, Mr. Wells didn't prepare it.

Q. Who prepared it?

A. I think it was Pritchard.

Q. That paper, the first paper, sworn statement, do you remember whether or not you received that paper in Wells' office that morning?

A. I don't remember.

Q. Do you know where you received the first paper you filed in the land office?

A. Before they was signed up?

Q. The first day you went to the land office to file, where did you receive the papers you filed there?

A. I went to Mr. Garrett and got them.

Q. You mean you got the blank form?

A. I got the blank form of Mr. Garrett.

Q. Did you take that back to Wells' office?

A. Not to my knowledge, no.

Q. Who filled it up for you, this paper here?

A. I couldn't tell you.

Q. Did Mr. Wells go to the land office with you that day?

A. I don't think he did. It has been so long ago—it has been seven years, and I can't remember all those details.

Q. Weren't you introduced to the register of the

(Testimony of Edward E. Butler.)

land office by John I. Wells on that occasion?

A. No.

Q. The certificate attached to this sworn statement, which you have identified, reads this way: "I hereby certify that the foregoing affidavit was read to affiant in my presence before he signed his name thereto; that said affiant is to me personally known, or has been satisfactorily identified before me by John I. Wells."

Mr. BUNDY.—I object to the reading of the certificate of some land office official, which the witness didn't make, and don't know anything about.

Mr. GORDON. — Q. Do you remember now whether or not Mr. Wells was there?

A. I don't remember. I knowed both the officers well.

Mr. BUNDY.—Q. You knew them both well?

A. Yes, I knew Mr. Garrett, but I disremember who the other one was.

Mr. GORDON.—Mr. King.

A. Yes, I knowed him well; I had done business with him, hauled him ice.

Q. I understand you were in the street sprinkling business? A. Yes.

Q. Did you drive the street sprinkling wagon?

A. No, I did not.

Q. Did your wife go with you on the occasion that you made your original entry, to the land office?

A. I don't think she did.

Q. Did she take up a claim? A. She did.

